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**IDAPA 16
TITLE 05
Chapter 03**

**16.05.03 - RULES GOVERNING CONTESTED
CASE PROCEEDINGS AND DECLARATORY RULINGS**

000. LEGAL AUTHORITY.

The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings pursuant to Sections 16-107, 39-103(1) and (3), 39-104, 39-105, 39-106, 39-107, 56-101(4), 56-133, 56-135, 56-201(b), 56-202, 56-203, 56-204A, 56-210, 56-216, and 67-5206(5)(b), Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

01. Title. These rules are to be cited fully as Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-93)

02. Scope. These rules establish general standards for contested case proceedings, requests for rulemaking, waiver of rules, fees for documents and declaratory ruling proceedings as required by law. Rules for fair hearings conducted to determine eligibility for benefits or services pursuant to the Food Stamps, Public Assistance, Medical Assistance and Social Services Programs may be found in Sections 300, et seq., and those specific rules shall be followed for those hearings to the extent that they are inconsistent with Sections 100 through 102. Personnel grievances and employment related actions are governed by and may be found in IDAPA 28.01.01.200, et seq., "Rules of the Idaho Personnel Commission," and the Personnel Policy and Procedures Manual of the Department. (7-1-93)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, the Department has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost in the main office and in each regional office of the Department. (7-1-93)

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of this chapter. The Board of Health and Welfare and the Director of the Department of Health and Welfare find that the provisions of IDAPA 04.11.01.000, et seq., Idaho Rules of Administrative Procedure of the Attorney General, are inapplicable and inappropriate for contested cases involving the programs administered by the Department, under the circumstances, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time-lines, program guidelines, and other provisions requiring the Department to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgates and adopts alternative procedures and elects not to be governed by any of the provisions of IDAPA 04.11.01.000, et seq., Idaho Rules of Administrative Procedures of the Attorney General. (7-1-93)

004. (RESERVED).

005. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter the following definitions apply: (7-1-93)

01. AABD. Aid to the Aged, Blind and Disabled. (7-1-93)

02. AFDC. Aid to Families with Dependent Children. (7-1-93)

03. Board. The Idaho Board of Health and Welfare as established in Section 39-107, Idaho Code. (7-1-93)

04. Contested Case. A proceeding resulting in an Order or Notice of Decision, in which the legal rights, duties, licenses, privileges, immunities, or other legal interests of a party or one (1) or more specific persons are

required by law to be determined by the Department or Board after an opportunity for a hearing, which shall not include rule-making nor Personnel grievances and employment related actions. (7-1-93)

05. Declaratory Ruling. An interpretation by the Board or Director as to the applicability of any statute, or order, or a rule of the Department or Board, to a Person's circumstances rendered pursuant to Section 67-5232, Idaho Code. (7-1-93)

06. Department. The Idaho Department of Health and Welfare established in Sections 39-104, 56-201, 56-202 and 56-203, Idaho Code. (7-1-93)

07. Director. The Director of the Department of Health and Welfare, as established in Sections 39-104, 39-105, 39-106, 56-202 and 56-203, Idaho Code. Except for specific authority statutorily granted to the Board of Health and Welfare, all administrative authority over Department functions rests with the Director. (7-1-93)

08. Hearing Authority. The Director and/or Board, or a Hearing Officer. No Hearing Authority or Hearing Officer, including Fair Hearing Officer, shall have the jurisdiction or authority to invalidate any federal or state statute or rule or regulation. (7-1-93)

09. Hearing Coordinator. The Person who coordinates, schedules, and administers contested case proceedings, and acts as custodian of records for all information and documentation involving contested case proceedings held by the Director, the Board, or a designated Hearing Officer, and who assigns a permanent docket number to each case for purposes of identification. The coordinator's mailing address and telephone number is:

Hearing Coordinator, Administrative Procedures Section
Department of Health and Welfare, Statehouse, Boise, Idaho 83720 - (208) 334-5559. (7-1-93)

10. Hearing Officer. The Director and/or Board, or a Person appointed or designated by the Director and/or the Board who presides over a particular contested case hearing and any related proceedings. (7-1-93)

11. Party. Party includes the following: (7-1-93)

a. Complainant. The Department or the Board when the Department or Board initiates an action against any Person. (7-1-93)

b. Intervenor. Any Person, other than one of the original Parties, who requests to be admitted as a Party in a contested case proceeding and whose right to intervene is granted under Idaho law. (7-1-93)

c. Petitioner. Any Person who files a written Petition for a determination of or appeal of his rights, duties, license or interests with the Department or Board. (7-1-93)

d. Respondent. Any Person, including the Department or Board, who responds to a valid Petition, written request, or complaint. (7-1-93)

12. Person. Any individual, partnership, corporation, association, governmental subdivision, department, agency or instrumentality, or public and private organization or entity of any character. (7-1-93)

13. Petition. All pleadings requesting relief, other than complaints or answers, including requests to be permitted to intervene in proceedings. (7-1-93)

14. TCC. Transitional Child Care. (7-1-93)

006. -- 039. (RESERVED).

040. PETITION FOR ADOPTION OF RULES.

Pursuant to Section 67-5230, Idaho Code, any Person may direct a written Petition to the Director or to the Chair of the Board requesting the promulgation, amendment, or repeal of a rule. (7-1-93)

01. Form For Petition. The Petition for the adoption, amendment, or repeal of a rule must: (7-1-93)

- a. List a name and address to which the Department may respond to the Petition; (7-1-93)
 - b. Include a statement of the legal authority and jurisdiction under which the rule was promulgated; (7-1-93)
 - c. List the rule in question and explain the reasons for the Petition; (7-1-93)
 - d. Include a statement of the preferred language of the rule. (7-1-93)
02. Submission of Petition. The Petition must be submitted in writing to the Administrative Procedure Section of the Department of Health and Welfare. (7-1-93)
03. Consideration of Petition. The Director or the Chair of the Board shall consider all Petitions for rule-making submitted in a timely manner. (7-1-93)
04. Disposition of Petition. Within twenty-eight (28) days of the submission, the Director or the Chair of the Board shall deny the Petition in writing, stating its reasons for the denials or shall initiate rule-making proceedings in accordance with Section 67-5220 et. seq., Idaho Code. (7-1-93)

041. -- 049. (RESERVED).

050. PETITION FOR DECLARATORY RULING.

Pursuant to Section 67-5232, Idaho Code, any Person may direct a written Petition to the Director or the Chair of the Board, whichever is applicable, through the Hearing Coordinator for a declaratory ruling as to the applicability of any statute, or any rule, of the Department or Board, to an actual set of facts involving that Person. (4-8-94)

01. Contents of Petition. The Petition for a declaratory ruling must include the following: (7-1-93)
- a. The authority to whom the Petition is addressed, i.e., the Board or the Director; (7-1-93)
 - b. The nature of the Petition, including the fact that it is a formal request for a declaratory ruling pursuant to this section; (7-1-93)
 - c. The specific statute or rule or regulation with respect to which the declaratory ruling is requested; (7-1-93)
 - d. A full and complete statement of facts describing the situation for which the declaratory ruling is requested; (7-1-93)
 - e. The specific ruling requested; (7-1-93)
 - f. The Petition must include the date of the Petition and the name and address of the Petitioner. If a Petitioner signs on behalf of a corporation or organization, that fact must be indicated opposite the signature; and (7-1-93)
 - g. The manner by which the statute, rule, regulation or order of the Board or Department interferes with, impairs, or threatens to interfere with or impair, the legal rights, duties, license, immunities, interests or privileges of the Petitioner. (7-1-93)
02. Disposition of Petition. Upon receipt and acknowledgement of a Petition and assignment of a docket number, the Hearing Coordinator shall transmit a copy of the Petition to the Board or to the Director. The Director or Board shall issue a final declaratory ruling in writing within seventy (70) days after receipt of the Petition or within such additional time as may be required as determined by the Director or Board. The Director or Board may decline to issue a declaratory ruling in the following circumstances: (7-1-93)
- a. When a Petition fails to meet the requirements set forth in Subsection 050.01; (7-1-93)

b. When the issue set forth in the Petition would be more properly addressed as a contested case, i.e. where there is a reasonable dispute as to the relevant facts, witness credibility is an issue, etc.; (7-1-93)

c. When the Petition fails to state a sufficient or cognizable legal interest to confer standing under applicable law; (7-1-93)

d. When the issue presented would substantially affect the legal rights, license, privileges, immunities, or interests of Parties other than Petitioners; or (7-1-93)

e. When the ruling requested is beyond the authority of the Director or Board. (7-1-93)

03. Issuance of a Declaratory Ruling. A declaratory ruling shall include the date the Petition was received and the name and address of the Petitioner, the title, chapter and section number of the rule, regulation or statute addressed, a concise statement of the principal reasons for or against the applicability of the rule, regulation or statute to the Petitioner, and, if applicable, an incorporation of the reasons for overruling the considerations urged by the Petitioner. The final decision must be mailed to the Petitioner within the time set in Subsection 050.02. (7-1-93)

04. Effect of Declaratory Ruling. A declaratory ruling is binding upon the Department and Board and upon the Petitioner receiving it as to the issues and facts presented, unless it is altered or set aside by a court of competent jurisdiction. The Department cannot retroactively change a declaratory ruling concerning any Petitioner. A declaratory ruling is subject to Judicial Review pursuant to Section 67-5270(2), Idaho Code. (7-1-93)

051. -- 079. (RESERVED).

080. FEES FOR COPIES.

Pursuant to Section 67-5205(b), Idaho Code, a fee will be charged to all Persons, other than employees of the state of Idaho, for copies of all Department or Board documents. The fee shall be ten cents (\$.10) per impression page, thus, a double sided copy will be twenty cents (\$.20). This fee will not be charged for copies of forty-nine (49) impressions and under. Documents are copies of rules, regulations and standards, generally available publications, and public records as defined under Section 9-337(10), Idaho Code. (7-1-93)

081. -- 099. (RESERVED).

100. GENERAL PREHEARING PROVISIONS.

The following general provisions are applicable to those phases of all contested case proceedings which occur before the hearing is conducted unless precluded by statute or regulation. (7-1-93)

01. Limitation of Time Periods. The individual program rules for time limitations within which certain actions must be taken or documents filed shall be followed. In the event there is no provision in the Idaho Code or other specific rule a Party shall have thirty-five (35) days to file an appeal of any adverse order or notice of decision of the Department, Director or Board. (7-1-93)

02. Notice of Hearing. All Parties in a contested case proceeding shall be afforded an opportunity for a hearing after reasonable notice, or within such time period as may be mandated by law. The hearing shall be arranged by the Hearing Coordinator. The notice shall include: (7-1-93)

a. A statement of the time, place and nature of the hearing; (7-1-93)

b. A statement of the legal authority under which the hearing is to be held; (7-1-93)

c. A reference to the particular sections of any statutes and rules involved; (7-1-93)

d. A statement of the issues involved; (7-1-93)

e. A statement that all documents relied upon by the Department to make its order or notice of decision, or otherwise related to the issues involved in the hearing and relied upon by any Party, are to be filed with

the Hearing Coordinator and that each Party must serve its own documents unless otherwise stated by law; (7-1-93)

- f. A statement that all Parties may be represented by counsel; (7-1-93)
- g. A statement concerning advance requests for hearing transcripts pursuant to Subsection 100.08. (7-1-93)
- 03. Prehearing Conference. The Board, Director, or the Hearing Officer may, upon written or other sufficient notice to all interested Parties, hold a prehearing conference for the following purposes: (7-1-93)
 - a. To formulate or simplify the issues; (7-1-93)
 - b. To obtain admissions or stipulations of fact and of documents; (7-1-93)
 - c. To arrange for exchange of proposed exhibits or prepared expert testimony; (7-1-93)
 - d. To limit the number of witnesses; (7-1-93)
 - e. To determine the procedure at the hearing; and (7-1-93)
 - f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (7-1-93)
- 04. Disposition of Case Without a Hearing. Unless precluded by law, disposition without a hearing may be made of any contested case by stipulation, agreed settlement, consent order, motions to dismiss, summary judgment, or default. (7-1-93)
- 05. Withdrawal of Petition. The initiating Party at any time may withdraw from any contested case proceeding upon serving written notice of withdrawal to the Hearing Authority. (7-1-93)
- 06. Withdrawal of Attorney or Representative. Any attorney or other Person representing a Party in a contested case proceeding who wants to withdraw from such proceeding must immediately notify, in writing, the Board, Director, or the Hearing Officer; the Hearing Coordinator; and all involved Parties. (7-1-93)
- 07. Intervention. Persons other than the original Parties to the proceeding, who are directly and substantially affected by the proceeding may intervene if they first secure an order from the Hearing Authority granting leave to intervene before being allowed to participate. (7-1-93)
 - a. Granting of Leave to Intervene. The granting of leave to intervene or to otherwise appear in any matter or proceeding shall not be construed to be a finding or determination of the Hearing Authority that such Party will or may be a Party aggrieved by any ruling, order or decision of the Hearing Authority for purposes of Judicial Review or appeal. (7-1-93)
 - b. Form and Content of Petitions. Petitions for leave to intervene must be in writing and must clearly: (7-1-93)
 - i. Identify the proceeding in which it is sought to intervene, setting forth the name and address of the Intervenor; (7-1-93)
 - ii. Make a clear and concise statement of the direct and substantial interest of the Intervenor in such proceeding and the relationship of the Intervenor to the other Parties; (7-1-93)
 - iii. State the manner in which such Intervenor will be affected by such proceeding, outlining the matters and things relied upon by such Intervenor as a basis for his request to intervene in such cause; (7-1-93)
 - iv. If affirmative relief is sought, the Petition must contain a clear and concise statement of relief sought and the basis thereof; and (7-1-93)

v. A statement as to the nature and quantity of evidence the Intervenor will present if such Petition is granted. (7-1-93)

c. Filing of Petitions. All Petitions must be filed with the Hearings Coordinator and submitted to the Hearing Authority. Petitions to intervene and proof of service thereof on all other Parties of record must be filed within seven (7) days after receiving notice of the proceeding, or if no notice is received, not less than fourteen (14) days prior to the date set for hearing and, if filed thereafter, must state a substantial reason for such delay; otherwise the Petition will not be considered. (7-1-93)

08. Hearing Record. The Board, Director, or Hearing Officer and the Hearing Coordinator must arrange for a record to be made of the contested case hearing. The record must be a verbatim record and it shall be magnetically recorded by two (2) recording devices, unless a Party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record shall be transcribed at the expense of the Party requesting a transcription and prepayment or guarantee of payment may be required. Once a transcription is requested, any Party may obtain a copy at the Party's own expense. The recorded proceedings will be provided to the Hearings Coordinator for inclusion into the record. The Department shall maintain an official record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. The record shall include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the hearing officer, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any transcript of all or part of the proceedings, staff memoranda or data submitted to the hearing authority in connection with the proceeding, and any recommended order, preliminary order, final order or order on reconsideration. (7-1-93)

09. Subpoenas. The Hearing Authority may compel the attendance of specific Persons and the production of specific documents, materials, or objects at any contested case proceeding by issuing a subpoena. In proceedings under Section 39-4413, Idaho Code, the Hearing Authority may request an order in the nature of a subpoena from the district court. (7-1-93)

10. Stipulations. The Parties to a contested case proceeding may stipulate as to any fact at issue, either by written stipulation or by oral statement shown upon the record. Any such stipulation shall be binding upon all Parties so stipulating and may be considered by the Hearing Authority. The Hearing Authority may require proof by evidence of any facts stipulated to, notwithstanding the stipulation of the Parties. (7-1-93)

11. Rules of Civil Procedure. As contested case proceedings and hearings are informal, the Idaho Rules of Civil Procedure shall not apply. The hearing authority shall provide the procedure at the hearing as required by the provisions of Section 67-5242(3) (7-1-93)

12. Discovery. Except for those programs governed by the Environmental Protection and Health Act, Section 39-107(5), Idaho Code, prehearing discovery shall be limited to obtaining the names of witnesses and copies of documents the opposing Party intends to offer or present at the hearing. The Hearing Authority or Hearing Officer may order disclosure of this information if a Party refuses to comply after receiving a written request. Nothing in this Section shall limit the authority of the Director provided in Section 56-227C, Idaho Code. (7-1-93)

13. Briefing Schedule. A Hearing Officer may require briefs and written memoranda to be filed by the Parties, and establish a reasonable briefing schedule. For post-hearing proceedings governed by Sections 67-5244 and 67-5245, Idaho Code, the Hearing Coordinator may establish a reasonable briefing schedule. (7-1-93)

14. Informal Disposition. Unless otherwise prohibited by statute or rule, the hearing authority may decline to initiate a contested case. Informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement or consent order, which informal settlement is encouraged. The parties may stipulate as to the facts, reserving their right to appeal to a court of competent jurisdiction on issues of law. The hearing authority may request such additional information as may be required to decide whether to initiate or to decide a contested case. If the hearing authority declines to initiate or decide a contested case a brief statement of the reasons for that decision will be furnished to all persons or parties involved. This disposition of a contested case by informal disposition shall be a final agency action pursuant to Section 67-5241, Idaho Code. (7-1-93)

101. GENERAL HEARING PROVISIONS.

The following general provisions are applicable to those phases of all contested case proceedings which occur during the hearing unless precluded by statute or rule. (7-1-93)

01. Classification of Proceedings. Proceedings before the Board, the Director, or their designee will be classified according to their nature, the relief sought, the need for proof, and the requirements of due process. (7-1-93)

02. Formal Complaints and Petitions. Complaints and Petitions must be in writing and shall set forth clearly and concisely the grounds of the complaint and a statement of the facts, actions or things done or omitted. Facts constituting such acts or omissions, together with citations, statutes, or rules of the Department or the Board involved, should be stated, together with the dates on which the acts or omissions occurred. The initial pleading of each Party must provide the name and the address of the Complainant or Petitioner or representative, together with the name, address and telephone number of his attorney, if any, must appear upon the complaint or Petition. Service of documents on the named representative or attorney is valid service upon the Party for all purposes. (7-1-93)

03. Limitation of Time Periods. The individual program rules for time limitations within which certain actions must be taken or documents filed shall be followed. In the event there is no provision in the Idaho Code or other specific rule or regulation, a Party shall have thirty-five (35) days to Petition or file an appeal of any adverse order of the Director or Board. (7-1-93)

04. Computation of Time. In computing any period of time relating to a contested case proceeding, the first day of the period is not to be included. The last day of the period is to be included unless it is a Saturday, Sunday or legal holiday in which case the period runs until 5:00 p.m. of the next working day, unless otherwise provided by law. (7-1-93)

05. Service of Documents. Documents concerning contested case proceedings must be served as follows: (7-1-93)

a. All pleadings, briefs and subsequent papers must be served upon every Party of record concurrently with the filing with the Hearing Coordinator. (7-1-93)

b. All notices and orders required to be served, other than the initial complaint or Petition, must be served in Person or by first class mail. (7-1-93)

c. The initial complaint or Petition must be served in Person or by certified mail. (7-1-93)

d. Service by first class or certified mail will be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail. The postmark shall be the determinant date for all timelines. (7-1-93)

06. Proof of Service. Proof of service must accompany all documents when they are filed with the Hearing Coordinator. (7-1-93)

07. Assignment of Docket Number. The Hearing Coordinator will date stamp and assign a permanent docket number to all pleadings filed in contested cases. (7-1-93)

08. Appointment of Hearing Officer and Disqualifications. The Director and/or the Chair of the Board, or their designee, may appoint or designate a Hearing Officer to preside over a contested case proceeding. The Hearings Coordinator shall administer the appointment of the Hearing Officer. Any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as a hearing officer except where a decision is required to be rendered within fourteen (14) weeks of the date of a request for hearing by state or federal statutes or rules of the Department. In all other cases any party shall have a right to file a motion to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the matter other than as a hearing officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or for any other cause provided for which a judge is or may be disqualified. Any such petition

for disqualification of a person serving or designated to serve as a hearing officer shall be filed within fourteen (14) days after receipt of the notice indicating that the person will preside at the contested case, or for disqualification for cause, promptly upon discovering facts establishing grounds for such disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency, other than the agency head, without a waiting designation of a presiding officer. A hearing officer whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination. In the event that a proposed disqualification of the agency head or a member of the agency would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest pursuant to the provisions of Section 59-704, Idaho Code. (7-1-93)

09. Hearing Officer Authority. The Hearing Officer shall, in the context of each proceeding and unless precluded by law, have the discretion, power and authority to: (7-1-93)

- a. Determine the order of presentation; (7-1-93)
- b. Grant or deny Petitions for intervention and reconsideration; (7-1-93)
- c. Determine the need, if any, for consolidation; (7-1-93)
- d. Rule on all evidentiary questions; (7-1-93)
- e. Rule on motions and objections and dispose of procedural requests; (7-1-93)
- f. Determine the need for prehearing conferences, recesses, adjournments, hearings on motions and postponements; (7-1-93)
- g. Administer oaths and affirmations; (7-1-93)
- h. Examine witnesses; (7-1-93)
- i. Issue subpoenas or request orders in the form of subpoenas as provided by law; (7-1-93)
- j. Prescribe general rules of hearing decorum and conduct; (7-1-93)
- k. Regulate the course of the proceeding; (7-1-93)
- l. Formulate a reasoned statement in support of the decision. Findings of fact should be set forth in statutory language and shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. (7-1-93)
- m. Perform any functions including those set forth in Sections 67- 5241 through 67- 5251, Idaho Code, and serve in place of and decide any contested case if delegated pursuant to Sections 39-107, 39-108, 56-101(4) and 67-2405(10), Idaho Code; and (7-1-93)
- n. All other functions specifically authorized by the appointing authority. (7-1-93)
- o. No Hearing Authority or Hearing Officer, including Fair Hearing Officer, shall have the jurisdiction or authority to invalidate any federal or state statute or rule or regulation. (7-1-93)

10. Ex Parte Consultations. Ex parte communications between the Hearing Officer and any Party to a contested case proceeding are precluded pursuant to Section 67-5253, Idaho Code. (7-1-93)

11. Representation by Counsel. Any Party in a contested case proceeding may be represented by counsel, at the Party's own expense. (7-1-93)

12. Open Hearings. All contested case hearings must be open to the public, unless precluded by law, and in a location reasonably convenient to all Parties to the proceeding. The location shall be arranged by the Hearing

Coordinator. (7-1-93)

13. Testimony Under Oath. All testimony to be considered, with the exception of matters officially noticed or entered by stipulation, must be given under oath as administered by the Hearing Officer or other authority authorized to administer oaths. (7-1-93)

14. Appearance and Representation. Any Party to a proceeding may appear and be heard in Person or may authorize an attorney to represent the Party at the Party's own expense. Unless otherwise expressly allowed by these rules, with the prior approval of the Hearing Authority, a Party may be assisted, but not represented, by a friend or relative. When a Party chooses to appear in Person and does not speak or understand the English language, an interpreter shall be allowed to interpret under oath. The interpreter shall not be allowed to act as a representative of the Party and shall act at the Party's own expense. (7-1-93)

15. Default. If a Party fails to appear at a scheduled hearing or at any stage of a contested case without good cause and reasonable notice to the Hearing Authority and to all other Parties, the Hearing Authority may enter a notice of proposed default order against the nonappearing Party. A default order may be altered or set aside upon petition filed within seven (7) days of service of the order showing sufficient good cause stating that grounds relied on, and providing reasonable notice to all parties. (7-1-93)

16. Order of Presentation. At any contested case hearing, the Party having the burden of proof (usually the Petitioner or Complainant) shall be the first to present testimony unless the Hearing Authority determines otherwise. (7-1-93)

17. Evidence. Pursuant to Section 67-5251, Idaho Code, the hearing shall be informal and technical rules of evidence shall not apply, except that irrelevant, immaterial, incompetent, duly repetitious evidence, or evidence, or excludable on constitutional or statutory grounds protected by the rules of privilege recognized by law may be excluded. Hearsay evidence may be received if it is relevant to or corroborates competent evidence, but shall not be the sole basis for any finding of fact. Any part of the evidence may be received in written form if doing so will expedite then hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. (7-1-93)

18. Testimony by Telephone or Other Electronic Means. With the prior approval of the Hearing Authority, witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all Parties. (7-1-93)

19. Official Notice. (7-1-93)

a. Discretionary Notice. Notice may be taken of judicially cognizable facts by the Hearing Officer or authority on its own motion or on motion of a Party. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the Parties shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (7-1-93)

b. Mandatory Notice. For all hearings the Hearing Authority must take official notice of the following materials on its own motion or on the motion of any Party. Objections going to such notice must become a part of the record. For the purposes of the hearing it is established as true without proof that the following are admissible, valid and enforceable: (7-1-93)

- i. Rules of the Department and other state agencies; (7-1-93)
- ii. Federal rules and regulations; (7-1-93)
- iii. State plans of the Department; (7-1-93)
- iv. The constitution and statutes of the United States and Idaho; (7-1-93)

- v. Public records; and (7-1-93)
- vi. Such other materials that a court of law must judicially notice. (7-1-93)
- 20. Contents of the Record. Pursuant to Section 67-5249(2), Idaho Code, the record in a contested case proceeding shall be kept by the Hearing Coordinator and must include the following: (7-1-93)
 - a. All notices, pleadings, motions and rulings; (7-1-93)
 - b. All evidence received or considered; (7-1-93)
 - c. A statement of all matters officially noticed; (7-1-93)
 - d. A record of testimony and offers of proof, objections and rulings thereon; (7-1-93)
 - e. A record of proposed findings and exceptions; (7-1-93)
 - f. Any decision, opinion, or report by the Hearing Officer; (7-1-93)
 - g. All staff memoranda or data submitted to the Hearing Authority or the Hearing Coordinator or the Hearing Officer in connection with consideration of the case; and (7-1-93)
 - h. All briefs or memoranda submitted by any Party. (7-1-93)
 - i. Any recommended order, preliminary order, final order, or order on reconsideration. (7-1-93)
- 21. Filing of Documents. Two (2) copies of all written communications and documents concerning any matter involving a contested case proceeding must be filed with the Hearing Coordinator, and an additional copy must be filed with the Hearing Officer, if one has been appointed or designated. Documents are deemed to be filed on the date postmarked by the United States mail or received by the Hearing Coordinator, whichever is earlier. (7-1-93)
- 22. Judicial Review. In accordance with Section 67-5271, Idaho Code, a Party which has exhausted all administrative remedies available within the Department may seek Judicial Review. Proceedings for Judicial Review shall be instituted in accordance with Sections 67-5270 and 5273, Idaho Code. (7-1-93)

102. GENERAL POST HEARING PROVISIONS.

Except in contested case proceedings where the Director, Board, or other Hearing Authority has delegated its jurisdiction and authority to render the final Department decision pursuant to Sections 39-107, 39-108, 56-101(4), 56-216, 67-2405(10) or 67-5246, Idaho Code, the following provisions are applicable to those phases of all contested case proceedings which occur after the hearing has been conducted: (7-1-93)

01. Board or Director Review. When in a contested case the Board or Director is to render the final decision and has not heard the case or read the record, the final decision shall not be made until a preliminary decision or a recommended decision is served upon the Parties, and an opportunity is afforded to each Party to file exceptions and present briefs and oral arguments to the Board or Director. Such preliminary or recommended decision shall contain a statement of the reasons therefore and the findings of fact necessary to the decision, prepared by the Hearings Officer who conducted the hearing. The Parties by written stipulation may waive compliance with the provisions of this subsection. (7-1-93)

02. Submission of Decision and Order. The Hearing Officer's decision shall be filed with the Hearing Coordinator. The Hearing Coordinator shall serve a copy of such decision upon all Parties personally or by mail. When applicable, the decision shall be transmitted to the Board or Director for a final decision. (7-1-93)

03. Contents of Decision and Order. A preliminary or recommended decision or order submitted to the Board or the Director for final decision must include: (7-1-93)

- a. Specific findings on all major facts at issue, separately stated with a concise or explicit statement of the facts supporting each finding; (7-1-93)
- b. A reasoned statement in support of the decision; (7-1-93)
- c. All other findings and recommendations of the Hearing Officer; and (7-1-93)
- d. A preliminary decision or recommended decision affirming, reversing or modifying the action or decision of the Department, or remanding the case for further proceedings. (7-1-93)
- e. The procedures and time limits for appeal, exceptions, or reconsideration. (7-1-93)
- 04. No Motions for Reconsideration. Unless otherwise provided by law or these rules, motions for reconsideration of any preliminary, recommended, or final decision shall not be granted. (7-1-93)
- 05. Final Decision and Order. After consideration of the preliminary or recommended decision and order, the Board or the Director may: (7-1-93)
 - a. Affirm the decision and order by notifying all Parties of its affirmance; (7-1-93)
 - b. Revise the decision and order and issue a revised decision and order to all Parties; (7-1-93)
 - c. Reverse the decision and order by notifying all Parties of its reversal; or (7-1-93)
 - d. Remand to the Hearing Officer for further proceedings. (7-1-93)
- 06. Service of Decisions and Orders. Decisions and orders shall be deemed to have been served when copies thereof are mailed to all Parties of record or their attorneys by the Hearing Coordinator. (7-1-93)
- 07. Public Inspection. All final decisions and orders of the Board or the Director must be maintained by the Hearing Coordinator and made available for public inspection. (7-1-93)
- 08. Effect of Petition for Judicial Review. The filing of a Petition for Judicial Review shall not stay compliance with the decision and order or suspend the effectiveness of the decision and order, unless otherwise ordered or mandated by law. (7-1-93)

103. SPECIFIC PROVISIONS -- CONTESTED CASES.

Sections 104 through 900 set forth proceedings that supersede the general provisions of Sections 100 through 102, insofar as they are different or inconsistent. (7-1-93)

104. -- 199. (RESERVED).

200. DIVISION OF ENVIRONMENTAL QUALITY -- HAZARDOUS WASTE PERMIT PROGRAM -- PROCEDURES FOR DECISION MAKING.

The procedure for decision making regarding all hazardous waste permits, including all hearings and administrative appeals, shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16, Title 01, Chapter 05, Section 013, "Rules and Standards for Hazardous Waste." (7-1-93)

201. -- 299. (RESERVED).

300. DIVISION OF WELFARE -- AABD, AFDC, TCC, REFUGEE CASH ASSISTANCE, REFUGEE MEDICAL ASSISTANCE, AND MEDICAID FAIR HEARING PROVISIONS.

The provisions of this Section govern the conduct of fair hearings to determine eligibility for benefits or services regarding AABD, AFDC, TCC, Refugee Cash Assistance, Refugee Medical Assistance, and Medicaid Programs. (7-1-93)

- 01. Department Responsibilities. The Department must advise each client in writing of the following:

(7-1-93)

- a. The client's right to a hearing at the time of application and any time a decision is made on his case. (7-1-93)
 - b. How to obtain a hearing if he disagrees with any decision made by the Department. (7-1-93)
 - c. The client's right to be represented by legal counsel or any spokesman he chooses to designate, or he may represent himself. (7-1-93)
02. Representation for Developmentally Disabled and Mentally Retarded Clients. When a client, due to physical or mental disability, is unable to make application, request a fair hearing or appeal a decision himself, a representative may act in his behalf. (7-1-93)
- a. The representative must agree to act in the client's behalf in all aspects of eligibility determinations and related contested case issues, and be subject to the same rights and responsibilities as the client himself. (7-1-93)
 - b. The representative is authorized to complete the application forms. The representative must accurately complete the forms. The representative must sign and date the application. (7-1-93)
 - c. The representative is authorized to receive notices from the Department and send correspondence in the client's behalf. The representative is authorized to contact the Department in Person or by telephone in the client's behalf. The representative is authorized to set up appointments in the client's behalf. The representative must provide requested verification and complete the status report changes in the client's circumstances. (7-1-93)
 - d. Unless the client or an authorized representative or attorney provides a written declaration to the contrary, eligible developmentally disabled and mentally retarded clients shall be deemed to be represented by the state Protection and Advocacy System established pursuant to 42 USC 6041, et seq., and 42 USC 10801 et seq., and designated by the Governor, which system shall have access to records of any such client maintained by any program or institution of the Department if such client is unable to authorize the system to have such access, or if such client does not have a legal guardian, conservator or other legal representative. Such system shall be deemed to have the authority to request a fair hearing, appeal a decision, represent the client in a contested case, and seek Judicial Review. Service of any notice, pleading or decision upon this system shall be effective as served on the client, however, the Department shall also make service upon the client as required by these rules and any other applicable rules and regulations. Unless the protection and advocacy system provides written notification to the Department that the client has declined its representation or that it has been unable to contact the client, the system shall be an authorized representative. (7-1-93)
03. Request for Hearing. The client or his representative must request a hearing in writing, stating the reasons for wanting to present his case to higher authority. The Department will provide a fair hearing request form when requested by the client or a representative. (7-1-93)
- a. The client or representative must make the request within thirty (30) days from the date the Notice of Decision was mailed by the Department. (7-1-93)
 - b. The client or representative can request a hearing when the Department delays in making an eligibility decision or making payment beyond the specified limits. This request for hearing must be submitted within thirty (30) days of when the action would have been mailed if the Department had acted in a timely manner. (7-1-93)
04. Granting a Hearing. A hearing must be granted to a client or representative who makes a timely, written hearing request for the following reasons: (7-1-93)
- a. When the Department delays in making an eligibility decision, making a payment, or a payment adjustment beyond the specified time limits. If the Department has authorized benefits prior to the hearing, the client may elect to submit a written withdrawal of his hearing request. (7-1-93)
 - b. When the Department reduces the payment amount to the client. (7-1-93)

- c. When the Department terminates aid to a client. (7-1-93)
 - d. When a client or representative disputes the amount, manner, or form of aid, including protective payments. (7-1-93)
 - e. When a client or representative disputes the Department's decision to deny aid to the client. (7-1-93)
05. Denying a Hearing. The Hearing Officer may deny or dismiss a hearing request for any of the following reasons. (7-1-93)
- a. A hearing can be dismissed if the client or representative withdraws the request, in writing. (7-1-93)
 - b. A hearing can be denied if the sole issue is an automatic grant adjustment, or reduction of Medicaid services, under state or federal law, unless the reason for the appeal is an incorrect grant computation. (7-1-93)
 - c. A hearing can be denied if the client or representative fails to appear, without good cause, at the scheduled hearing. Good cause is circumstances beyond the client's control as determined by the Hearing Officer. (7-1-93)
 - d. A hearing can be denied when the basis for granting a hearing does not exist. (7-1-93)
 - e. A hearing can be denied if the written request is received after the allowed time. (7-1-93)
06. Time Limits for Hearings. The Department must conduct the hearing and take action within ninety (90) days from the date the hearing request is received. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance (CSRA), the hearing must be held within thirty (30) days from the date the hearing request is received. (7-1-93)
07. Notification of Hearing. The Department must notify the client or representative of the date, time, and place of the hearing, at least seven (7) days before the scheduled hearing. The client or representative must be informed, in writing, of the hearing rights relating to this chapter. (7-1-93)
08. Continuation of Aid Pending a Hearing. If continuing aid is requested by the client, assistance must not be reduced or stopped until a hearing decision is given and the client should be advised of such right. The manner or form of payment must not be changed to a protective payment until a hearing decision is rendered. The client must be advised that benefits paid, pending a hearing decision, may result in an overpayment if the hearing decision is unfavorable to him. Continuation of aid pending a hearing must meet at least one of the following conditions: (7-1-93)
- a. A client or representative must request a hearing within ten (10) days from the date of the action to reduce aid (The date of action is the date that the benefits are reduced or ended, not the date the notice is mailed); (7-1-93)
 - b. The Department reduced aid without sending the required notice; or (7-1-93)
 - c. A client receives AABD and SSI benefits and has filed an appeal, based on proposed action to stop the SSI benefit. AABD can be continued until a decision is rendered by the SSA's Bureau of Hearings and Appeals judge. The client must have been granted a continuance based on an SSI appeal. (7-1-93)
09. Fair Hearing Officer. The Department must provide a Hearing Officer to conduct fair hearings for AABD, AFDC, and Medicaid clients. The Hearing Officer must have no prior involvement with the issue being contested. The Hearing Officer must be familiar with federal, state, and Department rules. (7-1-93)
- a. Prior to initial testimony, the Hearing Officer gives the oath or affirmation to the client, Department

representatives, and any witnesses. The Hearing Officer must direct the conduct of the hearing and ensure that all relevant issues are considered. The Hearing Officer must request, receive, and make part of the record, all evidence necessary to decide issues. When medical issues must be considered, the Hearing Officer may order a medical examination at the Department's expense. The Hearing Officer must prepare a hearing record to document the hearing decision. (7-1-93)

b. The Hearing Officer must comply with federal and state laws to make the hearing decision. The hearing decision must be based exclusively on facts contained in the hearing record. (7-1-93)

c. The hearing record may contain a transcript, tape recording, or an official report of the hearing events. The hearing record must contain all papers, requests, and exhibits filed in the hearing. The hearing record must contain the decision of the Hearing Officer. The decision of the Hearing Officer must contain the issues, findings of facts, reasons for decision, and cite supporting laws or evidence. (7-1-93)

d. The Department may respond to similar individual requests or a group request by holding a group hearing. A group hearing will deal with issues of law, rules, or policy, rather than individual eligibility or benefits. The Hearing Officer must affirm, reverse, or modify the Department's decision. The Department must notify the client that his hearing has been consolidated but he is still responsible for presenting his case at the hearing. (7-1-93)

e. The Hearing Officer may, at his discretion and in agreement with the client or his representative, conduct the hearing by telephone. (7-1-93)

f. Information that was not available to the Department, at the time the decision was made, will not be considered by the Hearing Officer. If the information warrants, the Hearing Officer may remand the case to the Department for an eligibility or payment-change decision. The decision to remand the case to the Department must be recorded in the hearing case record. (7-1-93)

g. The Hearing Officer may order a subpoena through the court when requested by a client or representative by a sworn statement showing the relevancy of the witness's testimony to the hearing. The client is responsible for all costs to issue and serve the subpoena, including witness fees and mileage, in civil cases. (7-1-93)

h. The examiner must continue to establish ongoing eligibility of clients electing to receive assistance pending a hearing. The client must continue to report changes within ten (10) calendar days. Benefits will continue to be adjusted based upon changes reported by the client. (7-1-93)

i. The Department must advise the client that aid paid pending a hearing decision is subject to recovery, if the hearing decision is unfavorable. (7-1-93)

j. Aid will be reduced or ended, as soon as possible, without additional notice, following a hearing decision or the decision to deny a hearing. (7-1-93)

k. Pursuant to Section 67-2405(10) the Hearing Officer is hereby delegated the authority to render a final decision for the Department pursuant to Section 67-5246, Idaho Code. The Hearing Officer's decision must be implemented by the Department within ten (10) working days, after the hearing decision is received. The Department must notify the client of the hearing decision, in writing, and specify any action the Department will take as a result of the decision. If the hearing decision is unfavorable to the client, the notice must tell the client of the right to appeal and Judicial Review. (7-1-93)

l. The hearing decision must be available to the public. The identity of the client must be safeguarded in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 01, "Rules Governing Protection and Disclosure of Department Records." (7-1-93)

10. Client's Rights Pertaining to Hearing. The client or representative has the right to obtain information to prepare for a hearing. The following lists specific rights. (7-1-93)

a. A client has the right to request a prehearing conference with the Department before the hearing date. This conference may be used to informally resolve the issue or to provide the client with information about the

hearing or actions. The conference will not affect the client's right to a hearing or the time limits for the hearing. After the conference, the hearing must be held, unless the client withdraws the request for hearing, in writing, or the Department withdraws the action contested by the client. (7-1-93)

b. A client has the right to request a hearing postponement before the hearing date. The Department may postpone a hearing up to thirty (30) days. When the hearing is postponed, the time limits for a benefit decision are extended for the same number of days. (7-1-93)

c. Prior to the hearing, the client has the right to examine documents and records, including that portion of the case record which will be used at the hearing. A client must not have access to confidential investigative information concerning his case. The nature and status of an investigation which could result in criminal prosecution, must be protected. Names of Persons who have disclosed information about the client without his knowledge, must be protected. The client may view available documents at the hearing. Confidential information must not be introduced at the hearing or affect the Hearing Officer's decision. (7-1-93)

d. A client has the right to receive, as requested, copies of documents and records that the Department plans to use at the hearing. (7-1-93)

e. If the client has a communication impairment or physical disability, he has the right to request help, including an interpreter, to enable him to prepare for, and participate in, the hearing. (7-1-93)

f. A client has the right to present his case at a hearing. The client has the right to be represented at hearing. (7-1-93)

g. A client has the right to request that his assistance be continued at the same benefit amount pending a hearing decision. (7-1-93)

11. Appeal Rights of Client. After an adverse hearing decision and exhaustion of all administrative remedies, the client has the right to appeal the decision to a district court within twenty-eight (28) days, pursuant to Section 67-5273(2), Idaho Code. The client must be notified, in writing, of this right to appeal. (7-1-93)

301. -- 303. (RESERVED).

304. CRIMINAL HISTORY CHECKS ADMINISTRATIVE HEARINGS.

The Department shall have the authority to grant an exemption review hearing for crimes or actions not enumerated in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 06, "Rules Governing Criminal History Checks." (7-1-93)

01. Authority. (7-1-93)

a. Persons denied a license under the Child Care Licensing Reform Act Sections 39-1201 et. seq., Idaho Code, may, in writing, request an exemption hearing within fourteen (14) days of the receipt of notice of denial. Upon receipt of the request the director shall fix a date for hearing not more than thirty-five (35) days from the receipt of the request and give the applicant at least fourteen (14) days notice of the hearing date. (7-1-93)

b. All other persons denied a license, certification, employment, homestudy or recommendation may, in writing, request an exemption hearing within twenty-one (21) days of the Department's mailing of a Notice of Denial. (7-1-93)

c. The Department will conduct a hearing to review the request for an exemption to the denial. At the regional director's discretion, the hearing will be held before the regional director or his designee, the institutional director or his designee, or before a regional review board composed of three members of the departmental regional advisory board. (7-1-93)

d. The Department shall have the authority to consider factors or evidence including, but not limited to, the following: (7-1-93)

- i. The severity or nature of the crime; (7-1-93)
- ii. The period of time since the crime was committed and the number of offenses; (7-1-93)
- iii. Circumstances surrounding the commission of the crime that demonstrate the unlikelihood of repetition; (7-1-93)
- iv. Evidence of rehabilitation; (7-1-93)
- v. Relationship of offense to client care activity; (7-1-93)
- vi. Activities since conviction, including employment or participation in therapy or education that would indicate changed behavior; or (7-1-93)
- vii. Granting of a pardon by the Governor or the President. (7-1-93)
- 02. Limitation. An exemption or denial is limited to the program for which the exemption is sought. (7-1-93)
- 03. De Novo Appeal. Hearings conducted under Section 304 may be appealed "de novo" under Section 100, et. seq., however, the filing of a notice of appeal shall not stay the action of the Department. (7-1-93)

305. -- 307. (RESERVED).

308. DIVISION OF WELFARE -- HEALTH CARE FACILITIES STANDARDS ADMINISTRATIVE HEARINGS.

Before denial or revocation is final, the licensing agency shall provide opportunity for a hearing at which time the owner or sponsor of the facility may appear and show cause why the license should not be denied or revoked. Hearings and appeals shall be governed according to the provisions of Sections 100 through 102. (7-1-93)

- 01. Hearings. Hearings for licensure, including denial or revocation. (7-1-93)
 - a. The applicant shall be notified by certified mail or by Personal service of the action to deny or revoke the license and the reasons for denial or revocation. (7-1-93)
 - b. A hearing will be provided by the Director or his designee if requested by the applicant or facility within twenty-one (21) days after the receipt of the agency's decision. (7-1-93)
 - c. On the basis of such a hearing, or upon failure of the applicant to present himself, the Director or his designee shall make and specify by certified mail or by Personal service to the applicant his final decision to deny, revoke, or grant the license. (7-1-93)
- 02. Appeals. Action to appeal the hearing decision. (7-1-93)
 - a. Appeal action must be filed by the applicant within twenty-eight (28) days following the notification of the action by the Department. (7-1-93)
 - b. Two (2) copies of the pleadings and other papers shall be served upon the Director. (7-1-93)
 - c. Pending final action, the status quo of the facility shall be preserved except as the court otherwise orders in the public interest. (7-1-93)

309. DIVISION OF WELFARE -- RESIDENTIAL CARE FACILITIES (RCF) ADMINISTRATIVE HEARINGS.

Hearings and appeals shall be governed by the provisions of Sections 100 through 102. (7-1-93)

- 01. Notification. The applicant shall be notified by registered mail or by Personal service of the action

to deny or revoke the license and the reasons for denial or revocation. (7-1-93)

02. Hearing. A hearing will be provided by the Director or his designee if requested by the applicant or facility within twenty-one (21) days after their receipt of the agency's decision. (7-1-93)

03. Final Decision. On the basis of such a hearing, or upon failure of the applicant to present himself, the Director of the Department or his designee shall make and specify by registered mail or by Personal service to the applicant his final decision to deny, revoke, or grant the license. (7-1-93)

04. Action to Appeal the Hearing Decision. (7-1-93)

a. Appeal action must be filed by the applicant within twenty-eight (28) days following the notification of the action by the Department. (7-1-93)

b. Two (2) copies of the pleadings and other papers shall be served upon the Director of the Department. (7-1-93)

c. Pending final action, the status quo of the facility shall be preserved except as the court otherwise orders in the public interest. (7-1-93)

310. (RESERVED).

311. DIVISION OF WELFARE -- LONG TERM CARE PROVIDERS REMEDIES ADMINISTRATIVE REVIEWS.

The provisions outlined herein consist of an administrative review process and an administrative hearing process. No further remedies are available upon reaching final disposition within this section. Pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 12, "Rules Governing Long Term Care Provider Remedies In Idaho," should the facility wish to contest imposition of a remedy other than a plan of correction and except as provided in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 12, Subsections 012.05 and 017.03, "Rules Governing Long Term Care Provider Remedies in Idaho," a written request for administrative review must be received by the State Survey Agency within fourteen (14) days of the facility's receipt of notice of imposition of the remedy. The request shall state the grounds for the facility's contention that the imposition of a remedy is in error. (7-1-93)

01. Failure to File Timely Request. If the facility fails to file a timely request, the decision to impose a remedy or remedies shall become a final order and no further administrative or Judicial Review or hearing shall be available. (7-1-93)

02. Notice of Administrative Review. The Department shall transmit printed notice of administrative review. Such notice shall set forth the date, time and location whenever the facility has requested and has been granted a review on imposition of a remedy. The facility shall post all notices so provided. The notices shall be placed in areas readily accessible and visible to residents and their representatives. (7-1-93)

03. Issuance of Written Decision. The Department shall issue a written decision within fourteen (14) calendar days of the completion of the facilities receipt of the administrative review. The review shall be made solely on the basis of the State Survey Agency recommendation, the survey report, the statement of deficiencies, any documentation the facility submits to the Department at the time of its request, and information received as a result of the administrative review process. For the purposes of such review, a hearing shall not be held and oral testimony shall not be taken. (7-1-93)

04. Appeal of Administrative Review. Should the facility wish to appeal the administrative review decision for remedies described in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 12, Section 004, "Rules Governing Long Term Care Provider Remedies," subject to the limitations therein, it may request an administrative hearing. The scope of the administrative hearing will be limited to issues raised and meaningfully addressed in the administrative review. The hearing request shall state specifically which portions of the administrative review is being appealed. A written request for hearing must be received by the State Survey Agency and the Office of the Hearings Coordinator within fourteen (14) calendar days of the facility's receipt of the

administrative review decision. Failure to file a timely request shall result in the administrative review decision becoming a final order and no further administrative or Judicial Review or hearing shall be available. (7-1-93)

05. In Cases of Temporary Management. If the Department has imposed temporary management pursuant to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 12, Subsection 017.05, "Rules Governing Long Term Care Provider Remedies in Idaho," or imposed either of the remedies specified in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 12, Subsection 004.05, "Rules Governing Long Term Care Provider Remedies in Idaho," the facility shall be entitled to a hearing which shall commence not less than five (5) nor more than thirty (30) calendar days after the facility's receipt of notice of imposition of said remedy or remedies. No administrative review shall be conducted in such cases and no request for hearing shall be required. The date, time and location of the hearing shall be included in the notice of imposition of the remedy or remedies. A facility may waive its right to a hearing by written notice to the State Survey Agency. (7-1-93)

06. Except in Cases of Immediate Jeopardy. Except in cases of appointment of a temporary manager, unless the Department has determined that immediate jeopardy to the health or safety of the residents of a facility exists, termination of a facility's participation, transfer of residents of a facility, or payment of civil monetary penalties, the imposition of remedies shall not be stayed during the pendency of any hearing. (7-1-93)

312. -- 329. (RESERVED).

330. DIVISION OF WELFARE -- MEDICAL ASSISTANCE PROGRAM PROVIDERS -- ADMINISTRATIVE HEARINGS.

01. Medical Assistance - Provider Reimbursement. Unless specifically provided in this section, all hearings and appeals regarding providers in the Medical Assistance Program shall be governed by the provisions of Sections 100 through 102. (7-1-93)

a. Within thirty (30) days after a facility is notified of an action, a final determination, an order, a notice of decision, or receives a final audit report it wishes to challenge, such facility shall request in writing that the administrator of the Division of Welfare (or designee) review such determination. The request shall be signed by the administrator of the facility, shall identify the challenged action, final determination, order, notice of decision or final audit report and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which such facility intends to rely to support its position shall be included with the request. However, documentation related to cost items shall be limited by provisions of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 02, Subsection 100.01, "Rules Governing Audits of Providers," for appeals of final audit reports. (7-1-93)

b. After receiving a request meeting the above criteria, the administrator of the Division of Welfare (or designee) will contact the facility to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for not later than thirty (30) days after a properly-completed request is received, unless both Parties agree in writing to a specified later date. (7-1-93)

c. The representative of the facility shall attend the conference. In addition, other representatives selected by the facility or the Department may attend and participate. The facility shall bring to the conference, or provide to the administrator of the Division of Welfare (or designee) in advance of the conference, any documentation on which the facility intends to rely to support its contentions. The Parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty (30) days after the initial session, unless both Parties agree in writing to a specific later date. (7-1-93)

d. A written decision by the administrator of the Division of Welfare (or designee) will be furnished to the facility within thirty (30) days after the conclusion of the conference. (7-1-93)

e. If the facility desires review of an adverse decision of the administrator of the Division of Welfare (or designee) the facility may, within twenty-eight (28) days following receipt of such decision, request in writing, a hearing on the contested matter, in accordance with the provisions of Sections 56-133 through 56-135, and 67-5240

et. seq., Idaho Code. Under these provisions only issues and documentation that were presented to the administrator of the Division of Welfare (or designee) shall be admissible in the administrative hearing before the appointed Hearing Officer. (7-1-93)

f. A Hearing Officer shall be appointed to hear the contested matter according to Sections 67-5240 et seq., Idaho Code, and shall issue a preliminary decision and order on the matter within forty-five (45) days after the hearing. (7-1-93)

g. Either Party to the contested matter may, within fourteen (14) days of receiving the preliminary decision and order, take exceptions to the Director or his designee, pursuant to Section 67-5245, Idaho Code. If exceptions are taken, briefs and/or oral arguments may be presented to the Director or his designee, and a final determination shall be issued within fifty-six (56) days. If no exceptions are taken by either Party of the contested matter after fourteen (14) days, the Director or his designee, shall affirm the Hearing Officer's preliminary decision and order within fourteen (14) days of receipt of that preliminary decision and order. (7-1-93)

331. DIVISION OF WELFARE - MEDICAID PROVIDER REIMBURSEMENT -- DISPUTED PAYMENTS TO HOSPITALS, HOME HEALTH AGENCIES, RURAL HEALTH CLINICS, HOSPICES, AND FEDERALLY QUALIFIED HEALTH CENTERS.

If a provider in the Medical Assistance Program has a grievance or complaint or requests an exception to the requirements of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, Sections 450 through 499, "Rules Governing Medicaid Provider Reimbursement in Idaho," the provider can invoke the following procedures: (7-1-93)

01. Filing of Dispute by Provider. Within thirty (30) days after a provider receives notification of an action or determination, and it has any grievance, complaint, or exception, the provider must identify in writing to the Bureau of Medical Assistance the specific issues involved and specifically describe the disputed action or inaction regarding such issues and the grounds for its contention that an action or determination was erroneous. Any information and copies of any documentation on which the facility intends to rely to support its position shall be included with the initial filing of the dispute. (7-1-93)

02. Acknowledgement by Bureau of Filing. The Bureau of Medical Assistance will acknowledge the written grievance, complaint, or exception and transmit its response to the provider within thirty (30) days. (7-1-93)

03. Request for Conference by Provider. If a provider disputes the conclusions and reasons found in the Bureau of Medical Assistance's response, the provider can request that the Bureau conduct an informal conference to resolve the issues in dispute. (7-1-93)

a. The request for an informal conference must: (7-1-93)

i. Be in writing; and (7-1-93)

ii. Be specific as to all issues in question; and (7-1-93)

iii. Set forth the specific dollar value in question; and (7-1-93)

iv. Be supplemented with any pertinent documentation relevant to the provider's contentions, as requested by the Bureau prior to the informal conference within thirty (30) days. (7-1-93)

b. The results of the informal conference will be transmitted to the provider in the form of a written letter of findings. (7-1-93)

04. Initial Action Final. If no request for an informal conference is made pursuant to Subsection 331.03.c. within thirty (30) days of the provider's receipt of the initial response to the dispute, or if no response containing the supplemental information requested by the Department prior to the scheduling of an informal conference, and no good reason why such information is not available to the Department, the initial action or determination per Subsection 331.03.c. will be final; or (7-1-93)

a. If a provider is not satisfied with the decision reached in an information conference conducted under the provisions of Subsection 332.04.d. it can refer the grievance, complaint, or exception to the Administrator, Division of Welfare, for an additional review; and (7-1-93)

b. After considering all findings and recommendations, the Administrator will make a final determination and so advise the provider, in writing, by certified mail with a return receipt addressed to the Department's Hearing Coordinator. Copies of the Administrator's final determination are also to be forwarded to the Bureau of Medical Assistance. (7-1-93)

05. Request for Administrative Hearing by Provider. After appealing the disputed action or determination to the Bureau of Medical Assistance and receiving the Administrator's final determination regarding the findings and recommendations, the provider can make a request to the Department for an administrative hearing on any grievance, complaint, or exception in dispute. (7-1-93)

a. Any such hearing must be conducted in compliance with Section 101. The filing of a request for a formal hearing on a disputed payment under the applicable provisions of the Idaho Administrative Procedures Act, Sections 67-5240 et seq., Idaho Code, is valid only after the provisions in Subsections 331.01 through 331.05 have been exercised, thus exhausting the informal appeal remedies. (7-1-93)

b. The request must be filed within twenty-eight (28) days following receipt of the Administrator's final determination. (7-1-93)

i. The hearing request must be in writing. (7-1-93)

ii. The hearing request must specify the items still in dispute addressed but not resolved during the informal appeals process. Failure to so specify remaining disputed items will void the request. (7-1-93)

c. In addition to those Parties specified in Subsection 005.09, Parties to the hearing are to include the following: (7-1-93)

i. A representative from the Bureau of Medical Assistance; and (7-1-93)

ii. A representative from the provider; and (7-1-93)

iii. If desired, counsel for the Department and the provider. (7-1-93)

d. The Hearing Officer will render a preliminary decision in writing within forty-five (45) days of the hearing and the decision will stand pending exceptions pursuant to the provisions contained in Subsection 330.01.g. (7-1-93)

332. DIVISION OF WELFARE - MEDICAID-ADMINISTRATIVE HEARING PROSPECTIVE COST RELATED -- PROVIDER REIMBURSEMENT.

01. Use of Administrative Review Process by Provider for Cost Related Reimbursement. If any facility or provider wishes to contest the way in which a rule or contract provision relating to the prospective, cost-related reimbursement system was applied to such facility by the Director, it shall first pursue the administrative review process set forth in Section 56-133, Idaho Code, and in this section. (7-1-93)

02. Additional Legal Review. The administrative review process set out in this section need not be exhausted if a facility wishes to challenge the legal validity of a statute, rule, or contract provision pursuant to Section 67-5278, Idaho Code. (7-1-93)

03. Administrative Review Process. (7-1-93)

a. Within thirty (30) days after a facility or provider is notified of an action or a final determination or receives a final audit report it wishes to challenge, such facility or provider shall request in writing that the Director or his designee review such determination. The request shall be signed by the licensed administrator of the facility or by

the provider, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which such facility or provider intends to rely to support its position shall be included with the request. However, documentation related to cost items shall be limited by the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 02, Subsection 100.01, "Rules Governing Audits of Providers," for appeals of final audit reports. (7-1-93)

b. After receiving a request meeting the above criteria, the Director or his designee shall contact the facility to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for not later than thirty (30) days after a properly completed request is received, unless both Parties agree in writing to a specified later date. (7-1-93)

c. The facility or provider and the Director or his designee shall attend the conference. In addition, representatives selected by the facility or provider, or the Director or his designee may attend and participate. The facility or provider shall bring to the conference, or provide to the Director in advance of the conference, any copies of previously submitted documentation on which the facility or provider intends to rely to support its contentions as detailed in Subsection 332.03.a. The Parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty (30) days after the initial session, unless both Parties agree in writing to a specific later date. (7-1-93)

d. A written decision by the Director or his designee will be furnished to the facility or provider within thirty (30) days after the conclusion of the conference. (7-1-93)

e. If the facility or provider desires review of an adverse decision of the Director or his designee it shall, within twenty-eight days following receipt of such decision, request a hearing in writing on the contested matter, in accordance with the provisions of Section 67-5240 et seq., Idaho Code. Under these provisions only issues and documentation that were presented to the Director or his designee shall be admissible in the administrative hearing before the Hearing Officer. (7-1-93)

f. The Hearing Officer shall issue a preliminary decision and order on the matter within forty-five (45) days. (7-1-93)

g. Either Party to the contested matter may, within fourteen (14) days of receiving the preliminary decision and order, take exceptions to the Director or his designee, pursuant to Section 67-5245, Idaho Code. If exceptions are taken, briefs and oral arguments may be presented to the Director or his designee, and a final determination shall be issued within fifty-six (56) days. If no exceptions are taken by either Party of the contested matter after fourteen (14) days, the Director or his designee shall affirm the Hearing Officer's recommended decision and order within fourteen (14) days of receipt of that preliminary decision and order. (7-1-93)

04. Request for Exception by Provider. If a provider has a grievance or complaint or requests an exception to the requirements of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, Sections 450 through 499, "Rules Governing Medicaid Provider Reimbursement in Idaho," the provider can invoke the following procedures: (7-1-93)

a. Within thirty (30) days after a provider receives notification of an action or determination, and it has any grievance, complaint, or exception, the provider shall identify in writing to the Bureau of Medical Assistance the specific issues involved and specifically describe the disputed action or inaction regarding such issues and the grounds for its contention that an action or determination was erroneous. Any information and copies of any documentation on which the facility intends to rely to support its position shall be included with the initial filing of the dispute. (7-1-93)

b. The Bureau of Medical Assistance shall acknowledge the written grievance, complaint, or exception and transmit its response to the provider within thirty (30) days. (7-1-93)

c. If a provider disputes the conclusions and reasons found in the Bureau of Medical Assistance's response, the provider can request that the Bureau conduct an informal conference to resolve the issues in dispute.

- (7-1-93)
- i. The request for an informal conference shall: (7-1-93)
- (1) Be in writing; (7-1-93)
- (2) Be specific as to all issues in question; (7-1-93)
- (3) Set forth the specific dollar value in question; and (7-1-93)
- (4) Be supplemented with any pertinent documentation relevant to the provider's contentions), as requested by the Bureau prior to the informal conference within thirty (30) days. (7-1-93)
- ii. The results of the informal conference shall be transmitted to the provider in the form of a written letter of findings. (7-1-93)
- d. If no request for an informal conference is made pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, Subsection 500.03, "Rules Governing Medicaid Provider Reimbursement in Idaho," within thirty (30) days of the provider's receipt of the initial response to the dispute, or if no response containing the supplemental information requested by the Department prior to the scheduling of an informal conference, and no good reason why such information is not available to the Department, the initial action or determination per Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, Subsection 500.03, "Rules Governing Medicaid Provider Reimbursement in Idaho," shall be final; or (7-1-93)
- i. If a provider is not satisfied with the decision reached in an information conference conducted under the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, Subsection 500.04, "Rules Governing Medicaid Provider Reimbursement in Idaho," it can refer the grievance, complaint, or exception to the Administrator of the Division of Welfare, for an additional review; and (7-1-93)
- ii. After considering all findings and recommendations, the administrator shall make a final determination and so advise the provider, in writing, by certified mail with a return receipt addressed to the Hearing Coordinator. Copies of the administrator's final determination are also to be forwarded to the Bureau of Medical Assistance. (7-1-93)
- e. After appealing the disputed action or determination to the Bureau of Medical Assistance and receiving the administrator's final determination regarding the findings and recommendations, the provider can make a request to the Department for an administrative hearing on any grievance, complaint, or exception in dispute. (7-1-93)
- i. Any such hearing shall be conducted in compliance with the provisions of this section. The filing of a request for a formal hearing on a disputed payment under the applicable provisions of the Idaho Administrative Procedures Act, Sections 67-5240 et seq., Idaho Code, is valid only after the provisions in Section 56-133, Idaho Code and in Subsections 330.01.b. through 330.01.e. have been exercised, thus exhausting the informal appeal remedies. (7-1-93)
- ii. The request shall be filed within thirty (30) days following receipt of the administrator's final determination. (7-1-93)
- (1) The hearing request shall be in writing. (7-1-93)
- (2) The hearing request shall specify the items still in dispute addressed but not resolved during the informal appeals process. Failure to so specify remaining disputed items shall void the request. (7-1-93)
- iii. Parties to the Hearing. In addition to those Parties specified in Subsection 005.09, Parties to the hearing are to include the following: (7-1-93)
- (1) A representative from the Bureau of Medical Assistance; (7-1-93)

(2) A representative from the provider; and (7-1-93)

(3) If desired, counsel for the Department and the provider. (7-1-93)

05. Preliminary Decision by Hearing Officer. The Hearing Officer shall render a preliminary decision in writing within forty-five (45) days of the hearing and such decision will stand pending exception pursuant to the provisions contained in Subsection 330.01.g. (7-1-93)

333. DIVISION OF WELFARE -- MEDICAL ASSISTANCE.

In accordance with Title 67, Chapter 52, Idaho Code, a facility or provider in the Medical Assistance Program which has exhausted all administrative remedies available within the Department and Sections 330, 331, or 332 may seek Judicial Review. Proceedings for Judicial Review shall be instituted in accordance with Section 67-5270, Idaho Code. (7-1-93)

334. -- 349. (RESERVED).

350. DIVISION OF WELFARE -- FOOD STAMP CONFERENCES AND ADMINISTRATIVE HEARINGS.

The following subsections are rules governing hearing and dispute resolution for food stamp programs. (7-1-93)

01. Agency Conferences. An agency conference is an informal meeting between the client and the Department. The Department must offer agency conferences to clients affected by an adverse Department action for food stamp benefits. The Department must advise clients that an agency conference is optional and it will not delay or replace the fair hearing process. (7-1-93)

a. The agency conference must be attended by an eligibility supervisor or program manager and by the client or his representative. The agency conferences may be attended by the eligibility examiner responsible for the action taken. (7-1-93)

b. A fair hearing must be held unless the client makes a written withdrawal of his request for a hearing. An agency conference may lead to an informal resolution of the dispute. (7-1-93)

c. An agency conference for clients contesting a denial of expedited service must be scheduled within two (2) working days. This limit does not apply when the client requests a later time or states that he does not want an agency conference. (7-1-93)

02. Fair Hearings. A client must be provided with a state level fair hearing when a Department action affects his household's food stamp benefits. A client must be provided with a state level fair hearing when he feels he has been wronged by the Department. This right excludes the household's placement on an alternate issuance system. Prompt, definitive, and final administrative action must be taken within sixty (60) days of the hearing request. (7-1-93)

03. Hearing Request and Representation. A client can request a hearing by any clear statement, oral or written, that he wishes to appeal a Department decision. The request can be from a household member, authorized representative, a representative for developmentally and mentally retarded Clients as defined in Subsection 300.02 or a Person acting on the household's behalf who may be a legal representative, relative, or friend, and such representative shall have all the rights and responsibilities of the client as provided by these rules and by IDAPA 16, Title 03, Chapter 04, "Rules Governing the Food Stamp Program in Idaho." The right to make the request must not be limited or interfered with by the Department. (7-1-93)

a. The client must file for a fair hearing within ninety (90) days of Department's adverse action affecting food stamp benefits. The Department's adverse action includes a loss of benefits in the prior ninety (90) days and denial to restore benefits lost less than one (1) year prior to the request. A client may request a hearing on the household's current level of benefits. (7-1-93)

b. The Department must assure that the hearing is conducted, a decision is reached, and the client and

Department are notified of the decision within sixty (60) days of receipt of a fair hearing request. (7-1-93)

c. The client can request, and must be granted a hearing postponement, not to exceed thirty (30) days. The time limit for the Department's response must be extended for as many days as the hearing is postponed. (7-1-93)

d. The Department must expedite hearing requests from clients, such as migrant farm workers, planning to move before the hearing decision would normally be reached. These hearing requests must be processed quickly to reach a decision and restore benefits, if indicated, before the client leaves the area. (7-1-93)

04. Department Assistance. Upon request, the Department shall make available, without charge, the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. (7-1-93)

a. The Department must advise the client of legal services available for help at the hearing. (7-1-93)

b. Upon request the Department must help the client make his hearing request. (7-1-93)

c. The Department must provide an interpreter and ensure that the hearing procedures are explained in the appropriate language, if the individual speaks a language other than English. (7-1-93)

05. Denial or Dismissal. A request for a hearing must not be denied or dismissed unless: (7-1-93)

a. The client withdraws the request in writing; or (7-1-93)

b. The client abandons the request by failing, without good cause, to appear at the scheduled hearing. If the claimant shows good cause for failure to appear within ten (10) days from the date of the scheduled hearing, the hearing will be rescheduled; or (7-1-93)

c. The request is not received within the period specified in these rules; or (7-1-93)

d. The request for hearing is due to an alternate coupon issuance system for the client. Alternate issuance placement and length of placement are not subject to fair hearings. (7-1-93)

06. Group Hearings. A series of individual requests for hearings can be combined into a single group hearing if the sole issue is one of federal law, regulation, or policy. The rules governing individual hearings must be followed. Each claimant or representative must be permitted to present his own case. (7-1-93)

07. Notification. The client must be promptly informed by a "Notice of Decision" if benefits are reduced or terminated pending a hearing decision. (7-1-93)

08. Hearing Scheduling. The date, time, and place of the hearing must be accessible to the client. (7-1-93)

09. Hearing Advance Notice. Written notice of the hearing must be sent to all Parties involved at least ten (10) days before the hearing date. An Information on Fair Hearings Form, HW 0999, must be sent with the advance notice. The client may request a shorter advance notice to speed up scheduling of the hearing. The advance notice must include the following information: (7-1-93)

a. The date, time, and place of the scheduled hearing; (7-1-93)

b. The client or representative may examine the case file prior to the hearing; (7-1-93)

c. The name, address, and telephone number of the Person to notify if the client is unable to attend the scheduled hearing. (7-1-93)

d. Specify the Department will dismiss the hearing request if the client or representative fails to

appear for the hearing without good cause. (7-1-93)

10. **Hearing Attendance.** Fair hearings or Intentional Program Violation (IPV) hearings must be attended by a Department representative and the client or client's representative. Hearing can be attended by friends and relatives of the client or by the public when the written consent of the client is filed with the Hearing Officer. The Hearing Officer can limit the number of Persons if a space limitation exists. (7-1-93)

11. **Telephone Fair Hearings.** Telephone hearings are allowed if the Hearing Officer chooses to use this procedure and the client consents to the telephone hearing. Clients must be advised that they may have a face-to-face hearing unless the client, the client's representative, the Department's representatives, and all witnesses are in one (1) location and only the Hearing Officer is in another location. The client's hearing rights must be clearly explained to protect the client's rights to due process. (7-1-93)

12. **Hearing Officer.** The hearing official must be an impartial Party not in any way connected with the previous actions or decisions in the case being appealed. The hearing official must not be the immediate supervisor of the EE who took the action. Fair hearings must be conducted only by central office Personnel. The Hearing Officer is the Hearing Authority unless a separate authority is designated by the Department before the hearing. (7-1-93)

13. **Fact-Policy Distinction.** When benefits are continued pending a hearing decision, the Hearing Officer must rule at the hearing whether the issue is one of federal law, regulation, or policy, or is a matter of fact or judgment applicable to an individual case. If the hearing official rules that the issue is one of federal law, regulation, or policy, benefits must be reduced or terminated. (7-1-93)

14. **Client Hearing Rights.** The client or his representative has the following hearing rights: (7-1-93)

a. To have the hearing conducted informally, with basic rules of order, to arrive at the facts and make the client feel at ease; (7-1-93)

b. To examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing or during the hearing; (7-1-93)

c. The contents of the case file, including the application and documents of certification must be made available. Confidential information, such as the nature or status of an investigation expected to result in a criminal prosecution or the names of individuals who have disclosed information about the client without the client's knowledge, is protected from release. Confidential information that is protected from release must not be introduced at the hearing or affect the Hearing Officer's decision; (7-1-93)

d. To present the case himself or have it presented by legal counsel or other representative; (7-1-93)

e. To bring witnesses to support the appeal; (7-1-93)

f. To advance arguments without undue interference; (7-1-93)

g. To question or refute testimony or evidence and confront and cross-examine adverse witnesses; (7-1-93)

h. To submit case evidence showing pertinent facts and circumstances. (7-1-93)

15. **Department Rights.** The Department representative has the same rights as the client to counsel, present the case, examine documents, bring witnesses, advance arguments, and question and submit evidence. (7-1-93)

16. **Hearing Record.** The hearing record contains the verbatim transcript or recording of testimony and exhibits, or the official report summarizing the substance of the hearing. The hearing record contains all evidence and other material introduced at the hearing and any recommendations made by the Hearing Officer. If the hearing involves medical issues concerning a diagnosis or physician's report, the Hearing Officer may request an opinion from a medical Person other than the Person making the original determination. The opinion from a medical Person,

at combined federal-state expense, must be from a source satisfactory to both the client and the Department. The second medical opinion will be a part of the hearing record. The hearing record must be accessible to the client or representative for copying and inspection at a reasonable time. Confidential information protected from release to the client must not be introduced at the hearing or used to affect the decision. (7-1-93)

17. **Hearing Decision.** Hearing decisions are rendered by the Hearing Authority in the name of the Department and are binding on the Department. The decision must be based exclusively on all issues questioned at the hearing and on the hearing record. Decisions must be in accordance with federal law, regulation, or policy. All hearing decisions must be accessible to the public and subject to the disclosure safeguards. Pursuant to Section 67-2405(10), Idaho Code, the Hearing Authority is delegated the authority to render a final order as set out in Section 67-5246, Idaho Code (7-1-93)

18. **Hearing Authority.** The Hearing Authority makes the final administrative decision in a hearing. One Person may be both the Hearing Officer and authority but not any Person who took part in the action being appealed. The Hearing Authority is a Person or Persons expressly appointed by the Department. The Hearing Officer acts as both the Hearing Officer and authority unless a separate Hearing Authority is designated before the hearing. The Administrator of the Division of Welfare or his designee must serve as the Hearing Authority when the Hearing Authority is a Person other than the Hearing Officer. (7-1-93)

19. **Decision Format.** The decision must summarize the case facts, specify the decision and reasons, and identify the supporting evidence and pertinent rules, and comply with Section 67-5248, Idaho Code. The decision is a part of the hearing record. (7-1-93)

20. **Notification of Claimant.** The client must be notified, in writing, of the decision and reasons for the decision. The client must be notified, in writing, of the right to appeal, and told that an appeal could result in a reversal of the decision. The client must be notified that benefits will be issued as decided by the Hearing Authority. (7-1-93)

21. **Appeal Rights of Claimant.** After an adverse hearing decision and exhaustion of all administrative remedies, the client has the right to appeal the decision to a district court within twenty-eight (28) days, pursuant to Section 67-5273(2), Idaho Code. The client must be notified, in writing, of his right to appeal the decision to a district court. (7-1-93)

22. **Department Implements Hearing Decision Promptly.** The Department must implement hearing decisions within sixty (60) days of the request for a fair hearing. The Department must restore benefits to clients leaving the project area before their departure if possible. If benefits are not restored prior to departure, the field office must forward an authorization to the client or the new project area. The field office in the new project area must accept an authorization and issue appropriate benefits. (7-1-93)

a. Decisions resulting in an increase must be reflected in the coupon allotment within ten (10) days of receipt of the hearing decision. The Department may implement the decision in the normal issuance cycle, more than ten (10) days, if the issuance will occur within sixty (60) days of the request for the hearing. The Department must issue a supplemental allotment, if necessary, to meet the timelines. (7-1-93)

b. Decisions resulting in a decrease must be reflected in the next scheduled issuance following receipt of the hearing decision. (7-1-93)

c. If the Hearing Authority determines a client has been improperly denied or issued a lesser allotment amount than was due, lost benefits must be issued. (7-1-93)

d. If the Hearing Authority upholds the Department's action, a claim for any overissuances must be prepared. (7-1-93)

351. DIVISION OF WELFARE -- FOOD STAMPS -- ADMINISTRATIVE DISQUALIFICATION HEARINGS.

An administrative disqualification hearing must be held when the Department has evidence an individual client has allegedly committed one (1) or more acts of intentional program violations (IPV) regardless of the current eligibility

of the individual. An administrative disqualification hearing must be held when the Department believes the facts of the case do not warrant civil or criminal prosecution. An administrative disqualification hearing must be held when cases referred for prosecution were declined, and in cases referred for prosecution where no action was taken within a reasonable period of time and the referral was withdrawn. (7-1-93)

01. **Combining Administrative Disqualification Hearing and Fair Hearing.** The Department may combine a fair hearing and an administrative disqualification hearing into a single hearing. The issues must be the same or related and the client must receive prior notice the hearings will be combined. If the disqualification hearing and fair hearing are combined: (7-1-93)

- a. The Department must follow the time frames for conducting disqualification hearings. (7-1-93)
- b. If the combined hearing is to settle the amount of the claim or overpayment and determine IPV, the client loses the right to a subsequent fair hearing on the amount of the claim and/or overpayment. (7-1-93)
- c. The Department must, upon the client's request, waive the thirty (30) day advance notice period. (7-1-93)

02. **Disqualification Hearing Procedures.** The Department may use the same hearing officials for disqualification and fair hearings. The provisions for Fair Hearings are also applicable for disqualification hearings. The hearing official must advise the client or representative that he may refuse to answer questions during the hearing. (7-1-93)

03. **Scheduling Disqualification Hearing.** The time and place of the hearing must be accessible to the client or representative. (7-1-93)

a. If the client or representative fails to appear, without good cause, the hearing will be conducted. The Department must have proof the advance notice of a hearing has been received by the client or has proof the client has refused to accept delivery of the notice. The hearing official will consider the evidence and determine if an IPV occurred based solely on the information provided by the Department. (7-1-93)

b. If IPV is determined, but a hearing official later determines the client had good cause for not appearing, the previous decision is no longer valid. A new hearing must be conducted. The previous hearing official may conduct the new hearing. The client has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. The hearing official must enter the good cause decision into the record. (7-1-93)

c. If the client or representative cannot be located, the hearing will be conducted without the household member being represented. (7-1-93)

04. **Advance Notice of Disqualification Hearing.** The Department must provide written notice to the client suspected of IPV at least thirty (30) days before the date of the disqualification hearing. A copy of the Department's IPV Administrative Disqualification Information Form, HW 0998, must be attached to the "Advance Notice of Disqualification Hearing" form. The notice must be mailed "Certified Mail - Return Receipt Requested." (7-1-93)

05. **Postponement of Disqualification Hearing.** The client or representative is allowed to postpone the hearing up to thirty (30) days. The postponement request must be made at least ten (10) days prior to the scheduled hearing. The Department must limit the number of postponements to one (1). If the hearing is postponed, the decision may be extended for as many days as the hearing is postponed. (7-1-93)

06. **Benefits While Awaiting a Disqualification Hearing.** A pending disqualification hearing does not affect a client's right to receive benefits if the client is otherwise eligible. The Department must determine the eligibility and benefit level as for any other client. The Department must end food stamp benefits if the certification period expires and the client fails to reapply for benefits. The Department must reduce or terminate benefits if it has documentation to support fewer benefits or ineligibility. Facts leading to the suspicion of IPV and a resulting disqualification hearing may be used to reduce or terminate benefits. The Department must reduce or terminate benefits if the client fails to request a fair hearing and continuation of benefits pending the hearing. (7-1-93)

07. Criteria for Determining IPV. The Hearing Officer must base the IPV determination on clear and convincing evidence introduced at the hearing. The evidence must show the client member committed and intended to commit an IPV. (7-1-93)

08. Deadlines for Disqualification Hearing Decision. The Department must conduct the hearing, arrive at a decision, and notify the client and the field office of the decision within ninety (90) days from the date the client is notified in writing a Department initiated hearing has been scheduled. (7-1-93)

09. Notification of Hearing Decision. The Department must notify the client of the hearing decision. The notice must say the hearing decision determined the client member did or did not commit an IPV. (7-1-93)

10. Disqualification Hearing Decision Format. The hearing official's decision must specify the decision reason, the supporting evidence, the pertinent regulation, and the client's response to reasoned arguments. (7-1-93)

11. Notice of Disqualification. The Department must mail a written "Notice of Disqualification" form to the client before the client is disqualified. The notice must inform the client of the decision and the reason for the decision. The notice must advise remaining household or budget unit members of the benefit amount they will receive. The notice must advise remaining household members they must reapply if the certification has expired. The notice must advise remaining budget unit members they must reapply if benefits have been terminated. (7-1-93)

a. Follow the procedures for handling income and resources of a disqualified member, as described in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 04, "Rules Governing the Food Stamp Program in Idaho," for food stamp clients. Follow the procedures for handling income and resources of a disqualified member, as described in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 01, "Rules Governing Eligibility for Aid to Families with Dependent Children (AFDC)," for AFDC recipients. (7-1-93)

b. The Department must send a written "Demand Letter for Overissuance and Repayment Agreement" to the client when a food stamp overissuance has occurred or an AFDC overpayment has occurred. (7-1-93)

12. Imposing of Disqualification Penalties. The Department must not disqualify a member for an IPV until the hearing official determines the IPV. If the hearing official rules the client committed a food stamp IPV, the client must be disqualified in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 04, "Rules Governing the Food Stamp Program in Idaho." If the hearing official rules the client committed an IPV under the AFDC program, the client must be disqualified in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 01, "Rules Governing Eligibility for Aid to Families with Dependent Children (AFDC)." (7-1-93)

a. The disqualification begins the month following the month the client receives written notice of the disqualification. (7-1-93)

b. The Department must inform the household member of: (7-1-93)

i. The date the disqualification will take effect; and (7-1-93)

ii. If the individual is no longer receiving benefits, the notice shall inform the individual that the period of disqualification will be deferred until the time the individual again applies for and is determined eligible for benefits. (7-1-93)

c. If the written notice for a first IPV is issued late in the month, and the client cannot be disqualified the month following the month of notice, follow the steps listed below: (7-1-93)

i. Step 1. Begin the disqualification two (2) months following the month of written notification; (7-1-93)

ii. Step 2. Invoke the penalty for five (5) rather than six (6) months as one (1) month has already elapsed. Establish a claim for overpaid benefits for the elapsed month; (7-1-93)

iii. Step 3. If more than two (2) months have elapsed, invoke the penalty for the remaining months. Establish a claim for overpaid benefits for the elapsed months. (7-1-93)

d. If the client is not receiving benefits when the disqualification period should begin, the disqualification is postponed until the client reapplies and is determined otherwise eligible. (7-1-93)

e. The period of disqualification must continue uninterrupted until completed, regardless of the eligibility of the disqualified member's household or budget unit, once the penalty is imposed. (7-1-93)

f. The same act of IPV, repeated over a period of time, must not be used to impose separate penalties based on a single hearing. (7-1-93)

13. No Fair Hearing Reversal for Disqualification. A fair hearing cannot reverse a disqualification hearing decision. (7-1-93)

14. Disqualification Reviewed by Court. The client is entitled to appear in court to reverse a disqualification decision. The period of disqualification may be subject to a stay by a court or another injunctive remedy. The client's right to appeal is governed by Subsection 350.21. (7-1-93)

15. Repayment of Overissuance or Overpayment to Disqualified Client. The disqualified client's household or budget unit is responsible for repayment of the overissuance or overpayment resulting from the disqualified member's IPV, regardless of the household or budget unit's eligibility or ineligibility. (7-1-93)

352. DIVISION OF WELFARE -- INDIVIDUAL AND FAMILY GRANT PROGRAM ADMINISTRATIVE HEARINGS.

An applicant for benefits or services in the individual grant program pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 16, "Rules Governing the Individual and Family Grant Program," who is dissatisfied with the administrative panel's determination of his eligibility and/or grant amount may request a fair hearing in accordance with Section 300. (7-1-93)

01. Time Limit. A request for hearing must be in writing stating the appellant's reasons for dissatisfaction and must be made as soon as possible not to exceed fourteen (14) days from receipt of the administrative panel's determination. (7-1-93)

02. Hearing. Hearings must be conducted pursuant to the rules set forth in Sections 300, et seq. (7-1-93)

353. -- 399. (RESERVED).

400. DIVISION OF HEALTH -- CLINICAL LABORATORIES ADMINISTRATIVE HEARINGS.

01. Notice by Director. Any approval issued pursuant to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 06, "Rules Governing Quality Control and Proficiency Testing for Idaho Clinical Laboratories," may be denied, suspended, revoked or not renewed, by notice in writing by the Director of the Department of Health and Welfare or his authorized representative served upon the applicant or Person responsible for the operation of a laboratory by registered or certified mail, setting forth the reasons therefor, if upon investigation it is found that said Person has failed or refused to comply with such rules. (7-1-93)

02. Request for Hearing. Within fourteen (14) days of receipt of notice of grounds for denial, suspension, revocation or renewal, the applicant or responsible Party may serve upon the Director by registered or certified mail, a written request for a fair hearing. Upon receipt of such request, the Director shall fix a date for hearing, which date shall not be more than twenty-eight (28) days from receipt of the request and shall give the applicant or responsible Person at least fourteen (14) days of notice of said hearing date. (7-1-93)

03. Denial, Suspension, Revocation. If no request for hearing is made within the time specified, the approval shall be deemed denied, suspended or revoked. If the agency finds that the public health, safety or welfare

imperatively requires emergency action, and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered pending proceedings for revocation or other action. (7-1-93)

401. -- 403. (RESERVED).

404. DIVISION OF HEALTH -- REPORTABLE DISEASES ADMINISTRATIVE HEARINGS.

01. Right for a Hearing. Any Person directly affected by an order or restriction as specified in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 10, Subsections 015.05 through 015.10, "Idaho Reportable Disease Rules," shall have the opportunity to have a hearing before the Director or an authorized representative of the Director within five (5) working days after the effective date of the order or restriction. (7-1-93)

02. Conduct of Hearing. The Department may take whatever precautions and make whatever arrangements are necessary for the conduct of such hearing to insure that the health of participants and the public is not jeopardized. (7-1-93)

03. Review. Any Person directly affected by an order or restriction may seek review of the Director's determination by the Board. The order or restriction shall remain effective, however, unless and until rescinded by the Board. (7-1-93)

405. DIVISION OF HEALTH -- WATER QUALITY LABS ADMINISTRATIVE HEARINGS.

Water Quality Laboratory certification issued pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 13, "Rules Governing Certification of Idaho Water Quality Laboratories," may be denied, suspended, revoked or not renewed, by notice in writing by the Director of the Department of Health and Welfare or his authorized representative, served upon the applicant or Person responsible for the operation of a Certified Water Quality Laboratory by registered or certified mail setting forth the reasons therefor if, upon investigation, it is found that said Person has failed or refused to comply with any of such rules and regulations. The manner of requesting an administrative hearing, and the conduct of that hearing, will be done in compliance with Sections 100 through 102 and Section 405. If no request for hearing is made within the time specified, the certification must be deemed denied, suspended or revoked. If the agency finds that the public health, safety or welfare imperatively requires emergency action and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered and a notice of hearing for revocation or other action will be issued within ten (10) days. (7-1-93)

406. DIVISION OF HEALTH -- MILK STANDARDS ADMINISTRATIVE HEARINGS.

Any producer, hauler or plant operator who receives a notice of intent to deny, suspend, revoke or fail to renew a license or permit pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 18, "Rules Governing Grade A Pasteurized Milk, With Administrative Procedures," shall have the right to Petition for a hearing. (7-1-93)

01. Filing for a Hearing. A Petition for a hearing shall be filed with the Hearing Coordinator by the producer, hauler or plant operator within fourteen (14) days of receipt of a notice of intent to deny, suspend, revoke or to fail to renew a license or permit. The Petition shall be signed, dated and shall set out the reasons for the hearing request. (7-1-93)

02. Scheduling of Hearing. If a request for a hearing is received by the Hearing Coordinator a hearing shall be scheduled within twenty-one (21) days of receipt of the request and shall be governed by the provisions of Section 101. (7-1-93)

03. Judicial Review. Any producer, hauler or plant operator who has exhausted all administrative remedies available within the Department of Health and Welfare and is aggrieved by the final decision in a contested case is entitled to Judicial Review of his case pursuant to Section 67-5240 et seq., Idaho Code. (7-1-93)

407. DIVISION OF HEALTH -- FOOD ESTABLISHMENTS ADMINISTRATIVE HEARINGS.

Every applicant for a license, licensee or license holder has the right to a hearing when aggrieved by an action or intended action of the regulatory authority resulting in the denial, suspension or revocation of a license according to

the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 19, "Rules Governing Food Sanitation Standards For Food Establishments (UNICODE)." (7-1-93)

01. Petition for Hearing. A Petition for a hearing shall be filed with the regulatory authority by the applicant or license holder within fourteen (14) days of receipt of a notice of action or intended action to deny, suspend, revoke or to fail to renew a license. The Petition shall be signed, dated and shall state the reasons for the hearing request. (7-1-93)

02. Date for Hearing Scheduled. If a request for a hearing is received by the Hearing Coordinator, a date for a hearing shall be scheduled within twenty-one (21) days of receipt of the request and shall be governed by the provisions of Section 101. (7-1-93)

408. DIVISION OF HEALTH -- RAW MILK ADMINISTRATIVE HEARINGS.

Any producer who receives a notice of intent to deny, suspend, revoke or to fail to renew a license or permit pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 21, "Rules Governing Retail Raw Milk, With Administrative Procedures," shall have the right to Petition for a hearing. A Petition for a hearing shall be filed with the Hearing Coordinator by the retail raw milk producer within fourteen (14) days of receipt of a notice of intent to deny, suspend, revoke or to fail to renew a license or permit. The Petition shall be signed, dated and shall set out the reasons for the hearing request. If a request for a hearing is received by the Hearing Coordinator, a hearing shall be scheduled within twenty-one (21) days of receipt of the request and shall be governed by the provisions of Section 101. (7-1-93)

409. -- 410. (RESERVED).

411. DIVISION OF HEALTH -- CONDENSED AND DRY MILK PRODUCTS ADMINISTRATIVE HEARINGS.

Any producer, hauler or plant operator who receives a notice of intent to deny, suspend, revoke or to fail to renew a license or permit pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 27, "Rules Governing Grade A Condensed Milk and Dry Milk Products, With Administrative Procedures," shall have the right to Petition for a hearing. (7-1-93)

01. Petition for Hearing. A Petition for a hearing shall be filed with the Hearing Coordinator by the plant operator within fourteen (14) days of receipt of a notice of intent to deny, suspend, revoke or to fail to renew a license or permit. The Petition shall be signed, dated and shall set out the reasons for the hearing request. (7-1-93)

02. Date of Hearing. If a request for a hearing is received, a hearing shall be scheduled within twenty-one (21) days of receipt of the request and shall be governed by the provisions of Section 101. (7-1-93)

03. Judicial Review. Any producer, hauler or plant operator who has exhausted all administrative remedies available within the Department of Health and Welfare and is aggrieved by the final decision in a contested case is entitled to Judicial Review of his case pursuant to Section 67-5240 et seq., Idaho Code. (7-1-93)

412. -- 501. (RESERVED).

502. DIVISION OF FAMILY AND COMMUNITY SERVICES -- EMERGENCY FOOD ASSISTANCE ADMINISTRATIVE HEARINGS.

The opportunity for a fair hearing must be provided to any household dissatisfied because of its suspension from the Temporary Emergency Food Assistance Program (TEFAP) or denial of such benefits and services. The fair hearing shall be governed by the provisions of Section 300 and Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 13, "Rules Governing the Temporary Emergency Food Assistance Program (TEFAP)." (7-1-93)

503. DIVISION OF FAMILY AND COMMUNITY SERVICES -- LIHEAP ADMINISTRATIVE HEARINGS.

01. Fair Hearing Opportunity. The opportunity for a fair hearing before a Hearing Officer must be provided to any household dissatisfied with any action by the Department regarding benefits or services pursuant Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 14, "Rules Governing the Low Income

- Home Energy Assistance Program (LIHEAP)," in accordance with Sections 300, et seq., if the: (7-1-93)
- a. Application is denied; or (7-1-93)
 - b. Application is neither approved nor denied within the time limit specified in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 14, Subsection 202.01, "Rules Governing the Low Income Home Energy Assistance Program (LIHEAP)," unless the delay was caused by the household's lack of cooperation in providing necessary and reasonable evidence; or (7-1-93)
 - c. Payments are to be made in a lesser amount than the household was notified earlier. (7-1-93)
02. Form of Request. The household must make a written request for hearing on form HW0406, "Appeal." (7-1-93)
03. Denial or Dismissal of Hearing. The household's request for a fair hearing is to be denied or dismissed if one (1) of the following conditions exists: (7-1-93)
- a. The household has withdrawn its request in writing; or (7-1-93)
 - b. The reason for a mass decrease in the amount of payment is due solely to unavailability of funds sufficient to make payments in the amount originally determined. (7-1-93)
04. Standards for Hearing. The fair hearing must meet the following standards: (7-1-93)
- a. It must be held in a place reasonably convenient and accessible to the claimant; and (7-1-93)
 - b. The claimant must be provided the opportunity before the hearing to review the case record and any written evidence that will be used in the hearing; and (7-1-93)
 - c. The Hearing Officer must be a DHW employee not involved in the decision being appealed; and (7-1-93)
 - d. Testimony must be under oath; and (7-1-93)
 - e. The hearing must be recorded and the decision must be based on the hearing record. (7-1-93)
05. Claimant Rights. The claimant must have the following rights: (7-1-93)
- a. To bring to the hearing a representative of his choice; and (7-1-93)
 - b. To present oral and written statements and other evidence; and (7-1-93)
 - c. To have witnesses subpoenaed; and (7-1-93)
 - d. To cross-examine witnesses; and (7-1-93)
 - e. To bring an interpreter, if needed. (7-1-93)
06. Informal Conference. Each claimant must be provided the opportunity for an informal conference to try to resolve the matter at issue before a fair hearing is held. (7-1-93)
07. Time Limits for Requesting a Hearing. The claimant must request a fair hearing pursuant to the following time limits: (7-1-93)
- a. No later than sixty (60) days from the date a notice of payment or denial is mailed; (7-1-93)
 - b. No later than ten (10) days from the date a notice of termination is mailed. (7-1-93)

08. Time Limits for Conducting Hearing. If a claimant requests a hearing within the time limit specified in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 14, Subsection 400.07, "Rules Governing the Low Income Home Energy Assistance Program (LIHEAP)," the hearing must be held, a decision issued, and action taken to carry out the decision pursuant to the following limits: (7-1-93)

a. Within sixty (60) days after the request, regardless of whether DHW provides an informal conference, if denial, delay, or payment amount is the issue; or (7-1-93)

b. Before decreasing or stopping payments, if that is the issue. (7-1-93)

504. DIVISION OF FAMILY AND COMMUNITY SERVICES -- HOMEMAKER SERVICE ADMINISTRATIVE HEARINGS.

If a client of the Department wishes to appeal the denial of services or benefits pursuant to IDAPA 16, Title 03, Chapter 11, "Rules Governing Homemaker Services," the client should be advised to proceed according to Section 101. An opportunity for a fair hearing will be granted to any applicant/recipient who requests a hearing to appeal the denial. (7-1-93)

505. -- 506. (RESERVED).

507. DIVISION OF FAMILY AND COMMUNITY SERVICES -- REHABILITATION FACILITIES ADMINISTRATIVE HEARINGS.

Within thirty (30) days of the site review, the applicant requesting certification, pursuant to IDAPA 16, Title 04, Chapter 04, "Rules and Minimum Standards For Rehabilitation Facilities," will be notified by mail or Personal service of the intent to deny or revoke certification and the reasons for denial or revocation, pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 04, Subsection 200.05, "Rules and Minimum Standards for Rehabilitation Facilities." Within fourteen (14) days of the date of the notice to deny or revoke certification, the applicant may request a hearing before the Board or its designee and shall be governed by the provisions of Sections 100 through 102. (7-1-93)

508. (RESERVED).

509. DIVISION OF FAMILY AND COMMUNITY SERVICES -- DEVELOPMENTAL DISABILITIES FACILITIES ADMINISTRATIVE HEARINGS.

Pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 11, "Rules and Minimum Standards Governing Developmental Disabilities Centers," the Department will deny or revoke certification if, after investigation of the center, it finds sufficient evidence that indicates the center is not adequate for the health, safety and the care, treatment, maintenance, training and support of developmentally disabled Persons in accordance with such rules, or the center services are not adequate to meet the needs of developmentally disabled Persons. Notification and hearing provisions shall be in accordance with Sections 100 through 103. (7-1-93)

01. Notice. Within thirty (30) days of the site review, the applicant will be notified by mail or Personal service of intent to deny or revoke certification and the reasons for denial or revocation, pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 11, Section 305, "Rules and Minimum Standards Governing Developmental Disabilities Centers." (7-1-93)

02. Hearing. Within fifteen (15) days of the receipt date of the notice to deny or revoke certification, the applicant may request a hearing with the Director or his designee. (7-1-93)

03. Review Decision. Upon receipt of a written request after hearing, a review decision will be sent to the applicant within thirty (30) days of the date of the conclusion of hearing, and the applicant may seek Judicial Review pursuant to Section 67-52 40 et seq., Idaho Code. (7-1-93)

510. DIVISION OF FAMILY AND COMMUNITY SERVICES -- ITSAP ADMINISTRATIVE HEARINGS.

An applicant or subscriber who is denied or discontinued services or benefits pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 02, "Rules Governing Idaho Telecommunication Service Assistance

Program (ITSAP)," may request a hearing. Hearings shall be governed by the provisions of Sections 300, et seq. (7-1-93)

01. Informal Hearings. Each subscriber will be provided the opportunity for an informal conference with his provider in order to resolve the issue prior to a formal hearing. (7-1-93)

02. Right to Request a Formal Hearing. The opportunity for a fair hearing before a Department Fair Hearing Officer must be provided to dissatisfied households if the: (7-1-93)

a. Application is denied; or (7-1-93)

b. Discount rate is discontinued; or (7-1-93)

c. Application is not acted upon within the time requirements pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 02, Section 400, "Rules Governing Idaho Telecommunication Services Assistance Program." (7-1-93)

511. -- 599. (RESERVED).

600. DIVISION OF FAMILY AND COMMUNITY SERVICES.

Unless otherwise provided by statute, rules of the Department, or other sections herein, any family member or alternative care provider not under contract with the Department has the right to appeal any Department decision regarding the Division of Family and Community Services provided under applicable Idaho Department of Health and Welfare Rules, including IDAPA 16, Title 06, Chapter 01, "Rules Governing Social Services" (except for placement of children in foster care as provided in Section 601), IDAPA 16, Title 06, Chapter 02, "Rules Governing Child Care Licensing," IDAPA 16, Title 06, Chapter 03, "Rules and Minimum Standards For Alcoholism Treatment Facilities," IDAPA 16, Title 06, Chapter 04, "Rules For Statewide and Regional Interdepartmental Substance Abuse Coordinating Committees," IDAPA 16, Title 06, Chapter 05, "Rules Governing Alleged Medical Neglect of Handicapped Infants," IDAPA 16, Title 06, Chapter 06, "Rules For Loans To Group Homes For Recovering Alcohol and Drug Abusers," IDAPA 16, Title 06, Chapter 07, "Rules Governing Juvenile Justice Services," and IDAPA 16, Title 06, Chapter 08, "Rules and Minimum Standards for DUI Evaluators." (7-1-93)

01. Appealable Decisions. Appealable decisions relevant to the Family and Community Services of the Department shall include, but are not limited to: (7-1-93)

a. Any decision not to provide services or to discontinue planned services; (7-1-93)

b. The Department's failure to act upon a referral to or request for services within thirty (30) days; or (7-1-93)

c. Any decision, unless court-ordered or court-authorized, to remove a child from an alternate care placement. (7-1-93)

02. Informal Processes. The Department affords the right to appeal decisions through informal processes in accordance with the current Family and Community Service policy on "Informal Processes for Appealing Decisions." (7-1-93)

a. The Person may pursue resolution through immediately requesting an informal conference with the family services worker handling the case and his immediate supervisor. (7-1-93)

b. The purposes of an informal conference are to: (7-1-93)

i. Resolve the matter at issue; (7-1-93)

ii. Explain the proposed action or inaction; and (7-1-93)

iii. Permit the individual, family or representative to present information about the matter and to

request information from the Department. (7-1-93)

03. Regional Grievance Process. The Person may appeal the decision further through a regional grievance process. Any request to use this process shall be made in writing to the Regional Family and Community Services manager no later than ten (10) days after notification of the decision which prompted the grievance. (7-1-93)

a. A grievance review shall be conducted: (7-1-93)

i. By the regional Family and Community Services manager or his designee, who must be a Person other than the family services worker and his supervisor handling the case; and (7-1-93)

ii. Within fifteen (15) days of receipt of the written request, unless a later reasonable date is specifically requested by the individual or family. By no means should the later date exceed forty-five (45) days. (7-1-93)

b. The individual or family involved shall receive five (5) days notice: (7-1-93)

i. Of the date, time, and place of the review; and (7-1-93)

ii. That he may bring any Person or representative of any group to speak on his behalf or to present relevant facts. (7-1-93)

c. The regional Family and Community Services manager or his designee convening the review may: (7-1-93)

i. Ask for anyone or any evidence that applies to the grievance; and (7-1-93)

ii. Continue the review in order to allow reasonable time to arrange for additional witnesses or more information. (7-1-93)

d. The review shall be held in an informal setting and manner which promote free and clear expression by all Parties. (7-1-93)

e. An audio tape recording of the review, reflecting the decision reached shall be maintained in the family's case record. (7-1-93)

f. Decision: (7-1-93)

i. If the issue was resolved through this process, the action agreed upon shall be taken as instructed by the Hearing Officer. (7-1-93)

ii. If the issue was not resolved, the individual or family shall be advised of their right to pursue the issue through the standard Contested Case procedures found in Sections 100 through 102. (7-1-93)

04. Right to Appeal. Use of the informal processes set forth in Section 600, shall in no way interfere with the right to appeal and receive an administrative appeal in accordance with Sections 100 through 102. (7-1-93)

05. Appeals. The appeal must be submitted to the Hearing Coordinator within twenty-eight (28) days of the date the Department gave written notice of the action. (7-1-93)

601. DIVISION OF FAMILY AND COMMUNITY SERVICES ADMINISTRATIVE HEARINGS -- SOCIAL SERVICES.

The Department of Health and Welfare, in carrying out its legal responsibility in respect to placement of children in foster family care which results from magistrate court action or the acceptance of a signed consent of the natural parent(s), is committed to the principle of a need for a strong professional partnership with foster parents. Grievances shall be conducted according to the provisions of Subsection 600.02 and Subsection 600.03. (7-1-93)

01. Removal of Foster Child - Grievance Procedure. While the Department must retain the authority and responsibility to decide on the removal of a foster child, every effort will be made to give reasonable notice to foster parents. If the situation cannot be resolved informally with the social worker and supervisor, foster parents will take the following steps to have their grievances heard by appropriate staff within the Regional Offices: (7-1-93)

a. The request for a hearing may be made in writing to the Regional Social Services Program Supervisor and must be made no later than ten (10) working days after the action which prompted the grievance. (7-1-93)

b. The hearing will be conducted by the Regional Social Services Program Supervisor or their designee, other than the social worker or supervisor handling the case, and the hearing will become a matter of record. (7-1-93)

c. The hearing will be held within fifteen (15) working days of a notice to the Regional Office of the grievance, unless a later reasonable date is requested by the foster parents. (7-1-93)

d. Foster parents will receive ample notice of date, time and place of the hearing. (7-1-93)

e. Foster parents may bring any Person or representative of any group to speak on their behalf or to present relevant facts. (7-1-93)

f. The Hearing Officer may also ask for anyone or any evidence that applies to the grievance and may adjourn the hearing in order to allow reasonable time to arrange for additional witnesses or more information. (7-1-93)

g. The hearing will be held in an informal setting and manner to promote free and clear expression by all concerned. (7-1-93)

h. If the issue can be resolved during the hearing, then it will be considered closed and a record made of the resolution. If not, the decision of the Hearing Officer will be presented in ten (10) working days after the hearing to the foster parents. If the foster parents wish to appeal the decision, they may do so directly to the Director of the Department of Health and Welfare, in writing. (7-1-93)

02. Appeal Procedure. An appeal is defined as an action taken by foster parents to protest a decision made by the Regional Office in relation to a grievance. The following procedure applies to the carrying out of an appeal: (7-1-93)

a. The appeal must be filed in writing, to the Director's office no later than ten (10) days after notification of the decision of the Regional Hearing Officer. (7-1-93)

b. The Hearing Officer will be selected by the Director from within the Department. (7-1-93)

c. The hearing will be held within thirty-five (35) days of receipt of the appeal. (7-1-93)

d. The foster parents will receive five (5) days' notice of the date, time, and place of the hearing. (7-1-93)

e. The hearing will be conducted in the same informal manner. (7-1-93)

f. The decision will be presented to the foster parents within ten (10) days after the adjournment of the appeal hearing. (7-1-93)

g. The appeal proceedings will be a matter of record. A copy of such proceedings will be held in the Regional Office, a copy provided to the foster parents, and the original will be retained in the Central Office. (7-1-93)

03. Child's Rights to a Hearing. If such a transfer results in a more restrictive living situation for the

child, the child must be afforded the opportunity for a court or administrative hearing concerning the placement (see Idaho Department of Health and Welfare Rules, IDAPA 16, Title 06, Chapter 01, Subsection 860.02, "Rules Governing Social Services"). The following hearing criteria must be satisfied before such a placement change may occur: (7-1-93)

a. A written notice to the child and his parents or guardians, including the time and purpose of the hearing, must be served at least twenty-four (24) hours prior to the hearing. (7-1-93)

b. No denial of adequate notice before hearing occurs if the juvenile willingly, knowingly, and understandingly signs a waiver of the twenty-four (24) hour period. (7-1-93)

c. A complete statement of the charges is to be included in the notice in order for the juvenile to decide whether to contest the charges of the Department, and if so, what rebuttal to prepare. (7-1-93)

04. Disclosure of Evidence and Rebuttal. Full disclosure of evidence need not be made until the hearing. Fairness to the juvenile requires that the decision of the Hearing Officer be based solely on the evidence and rebuttal evidence. Although the hearing may be informal, with a relaxation of the rules of evidence, it must allow the juvenile an opportunity to rebut the evidence and testimony which the Department has against him. The process is to be flexible enough to permit consideration of evidence including: (7-1-93)

a. Letters; and (7-1-93)

b. Affidavits; and (7-1-93)

c. Other material that would not be admissible in an adversary criminal trial. (7-1-93)

05. Cross-Examination. Formal cross-examination is not required, but the juvenile is to be given an opportunity to question his accusers so that the basis of the accuser's knowledge regarding the charges comes to the attention of the Hearing Officer. (7-1-93)

06. Hearing Officer Qualifications and Selection. The Hearing Officer, who is designated by the Regional Services Manager, must be neutral and must not have dealt with the juvenile previously. The Hearing Officer need not be a judicial officer or lawyer. (7-1-93)

07. Record of Hearing. The hearing proceedings must be recorded either electronically or stenographically; and a written record must be made of each hearing which must include: (7-1-93)

a. All pleadings, motions and intermediate rulings; and (7-1-93)

b. Evidence received or considered; and (7-1-93)

c. A statement of matters officially noticed; and (7-1-93)

d. Questions and offers of proof, objections and rulings thereon; and (7-1-93)

e. Proposed findings and exceptions; and (7-1-93)

f. Any decision, opinion, or report by the officer presiding at the hearing; and (7-1-93)

g. All staff memoranda or data submitted to the Hearing Officer or members of the Department in connection with their consideration of the case. (7-1-93)

08. Counsel/Representation for the Child. While counsel for the child is not required at the hearing, it is suggested that an adult who can argue and question on behalf of the child be allowed to attend the hearing. Such Person may be a close friend, social worker, foster parent, or a relative. (7-1-93)

09. Powers and Duties of Hearing Officer. The decision-making responsibilities of the Hearing Officer

are as follows: (7-1-93)

a. The Hearing Officer is limited in making his decision to the pleadings and prayer for relief set out in these pleadings. This means the Hearing Officer is limited to either affirming or reversing the Department's action; and (7-1-93)

b. The Hearing Officer, while affirming or reversing the Department's action, may recommend an alternate disposition which is not binding on the Department; and (7-1-93)

c. If during the hearing proceedings, facts are brought out which were not previously known and which could cause the Department to alter the pleaded disposition, the Hearing Officer's decision may reflect any stipulated settlement at which the Parties arrive. (7-1-93)

10. Filing of Decision. A copy of the Hearing Officer's decision must be sent to the Office of the Attorney General, Health and Welfare Division, Statehouse, Boise 83720 and must be served on both Parties to the action. (7-1-93)

11. When Hearing Not Required. An administrative hearing is not required if a youth is placed in a designated, temporary (not to exceed thirty (30) days), less-restrictive setting, pending transfer between two (2) or more restrictive placements. (7-1-93)

12. Members of Review Panel. If the review is an administrative review, the review team will include someone who does not fall within the direct line of supervision in the delivery of services to the child or parents being reviewed. This review panel may include Department staff, staff of other agencies, officers of the court and citizens qualified by experience, professional background or training. (7-1-93)

a. Members of the administrative review panel will receive instructions which will enable them to understand the review process and their roles as participants. (7-1-93)

b. The administrative review must be open to the participation of the parent(s) and the child if the child is of appropriate age. It may include foster parents. (7-1-93)

602. DIVISION OF FAMILY AND COMMUNITY SERVICES -- FAMILY SELF-SUPPORT (FSS) PROGRAM ADMINISTRATIVE HEARINGS.

Following conciliation, an individual who continues to be aggrieved by the Department's determination of his appropriate participation in the Family Self Support (FSS) program as outlined in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 06, Chapter 09, "Rules Governing the Family Self-Support Program," may request a hearing using the Department's established fair hearing procedure found in Sections 300, et seq. (7-1-93)

01. Fair Hearings - Mandatory JOBS and JSAP Participants. Mandatory individuals may request a hearing in response to the Notice of Adverse Action received from eligibility staff who will be responsible for assisting such individuals with the hearing procedures outlined herein. (7-1-93)

02. Fair Hearings - Exempt JOBS Participants and Nonsanction Participation Disputes and Complaints. These conciliation decisions require no benefit sanctions and therefore are not referred to financial and medical assistance. Participants do have the right to have these decisions considered by a Hearing Officer. (7-1-93)

a. FSS staff are responsible for assisting participants with completing and filing the fair hearing request forms in the following situations: (7-1-93)

i. For an exempt participant who has been determined to be in noncompliance with his JOBS employment plan; and (7-1-93)

ii. For any participant who wishes to further contest negative conciliation decisions regarding nonsanction complaints and disputes. (7-1-93)

b. The participant's request for hearing may be made in response to: (7-1-93)

- i. The NONC/NOAA sent by FSS staff following an unsuccessful conciliation for noncompliance with the provisions of the employment plan; or (7-1-93)
- ii. The written notification of outcome following conciliation for nonsanction complaints and disputes. (7-1-93)
- c. JOBS participants have thirty (30) days to request a hearing. JSAP participants have ninety (90) days. (7-1-93)
- d. The participant may be accompanied by a representative during the fair hearing process. (7-1-93)
- e. Unless the hearing is requested to address a noncompliance issue, the client will be expected to continue her FSS assignment pending the hearing. (7-1-93)

603. -- 606. (RESERVED).

607. DIVISION OF FAMILY AND COMMUNITY SERVICES ADMINISTRATIVE HEARINGS -- CHILD CARE STANDARDS.

Pursuant to Section 39-1218, Idaho Code, and IDAPA 16, Title 06, Chapter 02, "Rules and Standards For Child Care Licensing," within fifteen (15) days of receipt of a notice from the Department or Board of the intent to deny, suspend, revoke, or fail to renew a license, the applicant or licensee can file a Petition for an administrative hearing. Hearings and appeals shall be conducted according to the provisions of Sections 101, et seq. (7-1-93)

01. Form of Petition. The Petition, which must be signed and dated, must: (7-1-93)
 - a. Be directed to the Department or Board, as appropriate, through the Hearing Coordinator; and (7-1-93)
 - b. Give the Petitioner's name and address; and (7-1-93)
 - c. Specify the date the notice of grounds was received and from whom; and (7-1-93)
 - d. Identify the nature of the intended action by the Department or Board; and (7-1-93)
 - e. State that the Petitioner requests an opportunity to be heard by the Department; and (7-1-93)
 - f. State the facts or actions in dispute and information supporting the Petition, specifically including any contact or conferences with Department staff; and (7-1-93)
 - g. State the specific action which the Petitioner wishes the Department to take. (7-1-93)
02. Notice and Hearing. If the Petition is granted, a notice of hearing will be sent within ten (10) days of receipt of a timely Petition, scheduling a hearing no more than thirty (30) days from receipt of the Petition. (7-1-93)
03. Final Disposition. Pursuant to Section 39-1218, Idaho Code, the applicant or licensee will be notified of the final decision on his Petition within thirty (30) days after conclusion of the hearing. Appeals are governed by Section 39-1219, Idaho Code. (7-1-93)

608. -- 699. (RESERVED).

700. DIVISION OF VETERANS SERVICES PROVISIONS FOR CONTESTED CASES.

The provisions outlined herein are specific provisions that must be followed prior to those general contested case provisions contained in Sections 100 through 102, if the applicant/resident is dissatisfied or disagrees with the final determination and decision of the Veterans Affairs Commission. (7-1-93)

01. Notice of Action. The home administrator or his designee must notify the applicant/resident of any action to be taken regarding rejection of an application or restriction to or discharge from a home. (7-1-93)
- a. The notice of intended action must be in writing. (7-1-93)
 - b. The notice must state the following: (7-1-93)
 - i. The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; and (7-1-93)
 - ii. The effective date of the action; and (7-1-93)
 - iii. The applicant's/resident's right to request a hearing according to the provisions in this section; and (7-1-93)
 - iv. The procedure for requesting a hearing before the Commission as provided in this section and Section 100. (7-1-93)
 - c. The following notification deadlines are established for Domiciliary Care only: (7-1-93)
 - i. Restriction or discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 07, Chapter 01, Subsection 350.01.a., "Rules Governing Eligibility for Admission, Residency and Maintenance Charges in Idaho State Veterans Home-Domiciliary Care." (7-1-93)
 - ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (7-1-93)
 - d. The following notification deadlines are established for Residential Care only: (7-1-93)
 - i. Restriction or discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 07, Chapter 02, Subsection 350.01.a., "Rules Governing Eligibility for Admission, Residency and Maintenance Charges in Idaho State Veterans Home-Residential Care." (7-1-93)
 - ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (7-1-93)
 - e. The following notification deadlines are established for Nursing Care only: (7-1-93)
 - i. Restriction or discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 07, Chapter 03, Subsection 350.01.a., "Rules Governing Eligibility for Admission, Residency and Maintenance Charges in Idaho State Veterans Home-Nursing Care." (7-1-93)
 - ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (7-1-93)
02. Informal Resolution. A resident of a home must attempt to resolve the violations stated on the notice of action through verbal discussions with the home administrator or his designee prior to submission of a written request for a hearing before the Commission. (7-1-93)
03. Notice of Denial of Emergency Relief. The veterans services program supervisor or his designee must notify the applicant of the denial of his application for emergency relief. (7-1-93)
- a. The notice of denial must be in writing. (7-1-93)

- b. The notice must state the following: (7-1-93)
- i. The reason for denial and a reference to the pertinent rules under which the denial was made; and (7-1-93)
- ii. The applicant's right to request a hearing according to the provisions in this section; and (7-1-93)
- iii. The procedure for requesting a hearing before the Commission as provided in this section and (7-1-93)
- Section 100.
- c. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. (7-1-93)
04. Hearing Rights. After complying with this section, residents and applicants have the following rights to a hearing: (7-1-93)
- a. If a resident of a home is notified of pending disciplinary action, including restriction or discharge, the resident will be afforded an opportunity for a hearing with the Veterans Affairs Commission, pursuant to this section. (7-1-93)
- b. If an application for residency in a home is rejected, the applicant may request a hearing before the Veterans Affairs Commission, pursuant to this section. (7-1-93)
- c. If an application for emergency relief is denied, the applicant may request a hearing before the Veteran Affairs Commission, pursuant to this section. (7-1-93)
05. Hearing Provisions. The following hearing provisions are established: (7-1-93)
- a. A request for a hearing from a resident or an applicant for residency in an Idaho State Veterans Home must be submitted through the home administrator to the division administrator for possible resolution and/or scheduling before the Commission. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Subsection 700.02. Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (7-1-93)
- b. A request for a hearing from an applicant for emergency relief must be submitted through the veterans services program supervisor to the division administrator for possible resolution and/or scheduling before the Commission. Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (7-1-93)
- c. A request for a hearing must be in writing and signed by the applicant/resident. (7-1-93)
- d. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (7-1-93)
- e. Pending a hearing, benefits will be continued or held in abeyance as follows: (7-1-93)
- i. Benefits for domiciliary care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the home administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 07, Chapter 01, Subsection 350.01.a., "Rules Governing Eligibility for Admission, Residency and Maintenance Charges in Idaho State Veterans Home-Domiciliary Care." (7-1-93)
- ii. Benefits for residential care residents will be continued if the hearing request is made before the effective date of action and within fifteen (15) days of receipt of the notice. No action will be taken by the home administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 07, Chapter 02, Subsection

350.01.a., "Rules Governing Eligibility for Admission, Residency and Maintenance Charges in Idaho State Veterans Home-Residential Care." (7-1-93)

iii. Benefits for nursing care residents will be continued if the hearing request is made before the effective date of action and within fifteen (15) days of receipt of the notice. No action will be taken by the home administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 07, Chapter 03, Subsection 350.01.a., "Rules Governing Eligibility for Admission, Residency and Maintenance Charges in Idaho State Veterans Home-Nursing Care." (7-1-93)

iv. Benefits for emergency relief applicants will not be granted until the Commission renders a written decision following the hearing. (7-1-93)

f. The home administrator or the veterans services program supervisor or their designee must notify the applicant/resident in writing of the scheduled hearing date, time, and place. (7-1-93)

g. The applicant/resident may be accompanied by his representative and/or his witnesses and other persons directly concerned with the issues involved. (7-1-93)

h. After all parties to the hearing have presented statements and explanations regarding the issues involved, the Commission must render a decision, in writing, stating its final determination and intended action. Copies of the Commission's written decision must be sent to the division administrator, home administrator or veterans services program supervisor and applicant/resident with information regarding the availability of additional appeal provisions as outlined in Section 102. (7-1-93)

701. -- 996. (RESERVED).

997. PUBLIC RECORDS COMPLIANCE -- CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 01, "Rules Governing the Protection and Disclosure of Department Records." Although the documents in the record in contested case proceedings are normally public records, the whole or any part of such record or documents may be exempt from public record disclosure pursuant to Section 9-340, Idaho Code. (7-1-93)

998. -- 999. (RESERVED).